THE GOVERNMENT OF NEW SOUTH WALES

CONCURRENT REVIEW OF THE
FERTILISERS ACT 1985
STOCK FOODS ACT 1940
STOCK MEDICINES ACT 1989
STOCK (CHEMICAL RESIDUES) ACT 1975
PART 7 OF THE PESTICIDES ACT 1978

FINAL REPORT

NSW GOVERNMENT REVIEW GROUP
DECEMBER 1999

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ACRONYMS

ANZFA	Australia New Zealand Food Authority
ARMCANZ	Agricultural and Resource Management Council of Australia and New Zealand
COAG	Council Of Australian Governments
NRA	National Registration Authority for Agricultural and Veterinary Chemicals
EPA	NSW Environmental Protection Agency
MRL	Maximum Residue Limit
MPC	Maximum Permitted Concentration
SCARM	Standing Committee on Agriculture and Resource Management

DEFINITION OF MARKET FAILURE

The Terms of Reference require the Review Group to identify any issues of market failure, their nature and extent, which need to be, or are being addressed by the legislation.

'Market failure' is defined as the situation where freely operating markets fail to provide the most desirable and achievable outcome for society as a whole. Excessive chemical residues in agricultural products, and land and water degradation, are examples of markets 'failing' to deliver appropriate outcomes such as food safety and environment protection.

There are several forms of market failure:

- *Imperfect competition* is characterised by unequal bargaining power between market participants. The misuse of market power may result in inefficient resource allocation.

- *Externalities* or *spillovers* are benefits or costs associated with the activities of an individual or business which are imposed on others. The existence of externalities indicates that market participants are either not reaping the full rewards or are not bearing the full costs of their actions. Consequently, there may be too many or too few resources devoted to the activity in question.

- *Public goods* are goods, which because they cannot be withheld from one individual without withholding them from all, must be supplied communally. Examples include lighthouses, radio signals and national defence. Because there are no property rights for them, they are free to be utilised by anyone as and when desired. These conditions tend to lead to under-investment in these goods.

- *Imperfect information* is where market participants are not equally and fully informed. The competitive market model assumes that prices and other relevant information is available at no cost and that the information obtained is perfect. Neither of these assumptions hold in reality: the cost and accuracy of information varies greatly. Markets sometimes fail, therefore, because of a lack of information or because the cost of obtaining information is too high to make it worthwhile. This may lead to decisions by market participants which are not in their own interests and/or the interests of the general community.

Special economic problems which may warrant legislative intervention include circumstances involving natural monopolies and high transaction costs.

- Significant economies of scale and scope may mean one producer or provider (*a natural monopoly*) can supply a good or service at much lower cost than may individual providers separately undertaking an activity.

- High information, negotiation or contract enforcement costs between individual buyers and sellers may render an economic activity unviable. Cooperative, non-competitive action may be required to reduce *high transaction costs*.

EXECUTIVE SUMMARY

INTRODUCTION

1. The concurrent review of the *Fertilisers Act 1985*, the *Stock (Chemical Residues) Act 1975*, the *Stock Foods Act 1940*, the *Stock Medicines Act 1989* and Part 7 of the *Pesticides Act 1978* was undertaken to fulfil the NSW Government's commitments under the Competition Principles Agreement.

2. The Review Group was chaired by NSW Agriculture (Mr Geoff File) and consisted of representatives nominated by:

   - National Meat Association - NSW Division (Mr Martin Iffland);
   - NSW Farmers' Association (Mr Phillip Johnston);
   - NSW Health (Mr Geoffrey Richards);
   - Environment Protection Authority (Mr Mark Gorta);
   - NSW Agriculture (Mr Scott Davenport); and
   - The Cabinet Office (Mr David Bernauer).

3. Key functions of the Review Group were the preparation and distribution of an Issues Paper, consultation with stakeholders, consideration of submissions and preparation of the Final Report. The Review Group concentrated on clarifying the objectives of the legislation, identifying the key restrictions within the legislation and assessing the benefits and costs of each of them.

4. The Review Group called for public submissions and released the Issues Paper in April 1998. The closing date for submissions was 17 July 1998, however, late submissions were accepted. 14 submissions were received which are listed in Appendix 2.

5. Two Working Groups were also established during the review process to assist in the preparation of certain submissions to the Review Group. These consisted of representatives of the various sectors of the fertiliser industry and representatives of public interest, community and environmental groups.

6. In addition, the Review Group invited organisations whose members are directly affected by this legislation to meet with the Review Group and advise them on issues of concern. As a result, the Review Group met with the NSW Country Meatworks Association and the NSW Branch of the Limestone Association of Australia.

7. The Review Group was required to submit this report to the Minister for Agriculture

OBJECTIVES

8. To comply with the Competition Principles Agreement, the Review Group was required to identify the objectives of the *Fertilisers Act 1985*, the *Stock Foods Act 1940*, the *Stock Medicines Act 1989*, the *Stock (Chemical Residues) Act 1975* and Part 7 of the *Pesticides Act 1978* and consider whether the objectives of each can only be achieved by restricting competition.

9. As well as establishing the objectives of the five pieces of legislation the Review Group was required to assess whether there is a continuing need for those objectives to be met through government intervention. That is, the Review Group was required to establish any areas of 'market failure' (as defined on page iii) or other clearly defined public policy objectives which are being, or should be, addressed by these Acts or other legislation.

10. Under a market failure framework, government intervention is limited to addressing problems associated with clear and identifiable areas where freely operating markets fail to produce socially desirable outcomes. This process will determine which of the current objectives of the Act, if any, represent legitimate roles for government, and which others may be objectives of industry.

11. The Review Group recognised that market failure is a necessary, but not sufficient, condition for government intervention. The decision to intervene in the market should depend on the size and extent of the market failure and the likely outcomes. In relation to chemical residue management, reasons commonly given for government intervention include:

- food safety;
- market access;
- environmental protection;
- consumer protection; and
- animal welfare.

12. On initial examination of the legislation under review, the Review Group concluded that there is a strong case to redefine the objectives of each piece of legislation to make them less 'process' and more 'outcome' orientated, by focussing them on redressing identified market failures.

Recommendation 1.
In the event that the Acts under review continue, or alternative legislative arrangements are introduced, the Review Group recommends that the objectives of these five Acts be redefined to make it clear what forms of market failure they are intended to address, and what outcomes the NSW Government seeks to achieve.

COMPETITION RESTRICTIONS

13. The Review Group was required to identify any restrictions on competition in the five pieces of legislation being jointly reviewed, analyse their likely effect on the economy generally and weigh the costs and benefits of the restrictions. The guiding principle of the review was that the legislation should not restrict competition unless it could be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs; and
(b) the objectives of the legislation could only be achieved by restricting competition.

14. In addition to assessing whether the restrictive provisions within the legislation generate net public benefits, the Review Group was also required to assess whether they do so in a manner which least restricts competition.

15. Where the criteria at (a) and (b) are met, competition restrictions in legislation may be retained. However, to be consistent with Competition Policy principles, where competition restricting provisions of the Act are identified and it is determined either that the provisions do not yield a net public benefit or that the same objective could be achieved without restricting (or by a lesser restriction on) competition, then it is necessary to recommend repeal of those provisions.

16. The phrase 'restricting competition' can mean obvious and major restrictions, such as restricting entry to an industry, setting prices or banning certain commercial behaviour. However, it may also include restrictions where the effects are more subtle. The definition applied by the Review Group was that a restriction on competition occurs when the behaviour of individuals or firms is changed from that which would otherwise occur in the absence of regulation.

17. Restrictions on competition in the form of legislative controls imposed by government can have positive outcomes for the community where they effectively address forms of market failure. Alternatively, they can generate public costs where they are ineffective in addressing these problems, where they duplicate other legislation aimed at addressing the problem, or where they do not address any market failure at all.

18. The Review Group recognised that legislative provisions which restrict competition may be entirely appropriate and justified to meet public policy objectives. That is, the Review Group did not approach the review with a preconception that legislative provisions which restrict competition are necessarily bad or in some way fundamentally flawed. The review process was expressly intended to identify whether the provisions of the various pieces of legislation can be justified on the grounds that they deliver net public benefits.

FERTILISERS ACT 1985

19. The sale of fertilisers in NSW is controlled by the *Fertilisers Act 1985*. The *Fertilisers Act 1985* provides for the registration of brand names for soil improving agents and regulates the sale of soil improving agents and trace element products. The legislation sets minimum content standards and maximum allowable concentrations of heavy metals. Labelling requirements are also contained in the legislation as a means of informing users of soil improving and trace element products of the content and chemical composition of the particular product. The legislation contains provisions concerning false representations by suppliers, and provides various powers of inspection and enforcement.

Objectives

20. The Review Group clarified the objectives of the Act by reference to the preamble to the *Fertilisers Act 1985* which states that it is:

"An Act to provide for the registration of brand names for soil improving agents; to regulate the sale or supply of soil improving agents, liming materials and trace element products; and for related purposes."

21. The Review Group agreed that the objectives relate more to matters of process than to particular outcomes and need to be redefined to better comply with Competition Policy

principles. At present, the Act appears to be addressing issues relating to quality assurance, food safety, market access and environmental protection. In addition, minor components of the current legislation, specifically certain warning label requirements, also appear to address user occupational health and safety as well as the general health of livestock and plants.

22. The Review Group was required to assess whether there is a continuing need for these objectives to be met through government intervention. That is, the Review Group was required to establish any areas of 'market failure' (as defined on page iii) or other clearly defined public policy objectives which are being, or should be, addressed by the Act.

23. The Review Group concluded that quality assurance is no longer an appropriate objective of government intervention in the NSW fertiliser industry. There are no apparent impediments preventing the fertiliser industry from establishing appropriate levels of quality assurance.

24. The Review Group, however, further concluded that government intervention in relation to the sale of fertilisers in NSW is warranted on the basis of the existence of market failures relating to food safety, market access and environmental protection.

Recommendation 2.
Further to Recommendation 1, the Review Group recommends that the primary objectives of the Fertilisers Act 1985 should be to:

- ***protect human health by intervening early in the agricultural production process. In particular to ensure that unsafe levels of heavy metals and other contaminants as defined by domestic food standards authorities do not transfer to the human food chain by their excessive presence in soil improving agents or trace element products;***
- ***facilitate international trade by supporting initiatives to ensure that agricultural products destined for export markets comply with the contaminant requirements of international trading partners; and***
- ***protect the environment by better informing purchasers of the composition of soil improving agents and trace element products and by also restricting the content of certain substances.***

Competition Restrictions

25. The Review Group found that the major provisions of the *Fertilisers Act 1985*, namely:

- registration of brand names for soil improving agents;
- conformation with registered particulars and composition standards; and
- labelling requirements,

may all restrict competition in some way.

Registration of brand names for soil improving agents

26. Registration potentially restricts competition by impeding entry to the industry and imposing compliance costs on those who do.

27. The introduction of Mutual Recognition Policy in Australia enables fertilisers or other soil improving agents produced in or imported into one State, and which may lawfully be sold in that State, to be sold in NSW without the necessity for compliance with further requirements described in the *Fertilisers Act 1985*.

28. The Review Group noted that fertiliser registration has been discontinued in Victoria, Queensland and South Australia, and although legislation in Western Australia still contains registration requirements, these are not being administratively enforced.

Conformation with registered particulars and composition standards

29. The requirement to conform to registered particulars and composition standards potentially restricts competition by limiting flexibility in the production and sale of fertilisers.

30. Quality standards would generally be understood to include composition standards for fertilisers. Governments are increasingly restricting the direct regulation of product quality to those instances where variation in a product attribute may impact on human health or the environment.

31. Arguably, consumer demand for information relating to product quality attributes, rather than the legislation, has ensured that manufacturers have maintained product quality.

32. Maximum permitted concentrations of mercury, lead and cadmium in specified fertilisers are currently included in the composition standards for soil improving agents. The legislation also imposes maximum permitted concentrations of the above heavy metals in trace element products.

33. While there are national standards in place to gradually lower cadmium levels in superphosphate, the Review Group acknowledged cadmium as a serious risk to the sustainability of agricultural systems and a risk which fertiliser manufacturers should be encouraged to address through further product development.

Labelling requirements

34. Labelling requirements potentially restrict competition by imposing compliance costs on fertiliser manufacturers and dealers and forcing them to provide purchasers with certain information. It may therefore impact on their profitability and limit their scope to differentiate their product and, therefore, constrain their responses to market forces.

35. On the other hand, labelling enforces the provision of certain information to purchasers which may contribute to public objectives in areas such as environmental protection and occupational health and safety.

Sewerage sludge (biosolids), animal waste and sea weed

36. Another issue discussed by the Review Group was the use of sewerage sludge, animal wastes and sea weed as soil improving agents.

37. Issues for consideration related to sewerage sludge, and indeed all animal wastes used in or as fertilisers, are the levels of nutrients (nitrogen and phosphorous), heavy metals, pesticides, and pathogens (micro-organisms from human excreta in the sludge, including viruses, bacteria and human roundworms, tapeworms and liver flukes) they contain. The present situation appears to be that scientific methods have been developed for the successful treatment of sewerage sludge which have the effect of rendering the use of sludge safe in certain controlled circumstances.

38. At present 'controlled circumstances' means a licence to pollute issued by the EPA under the *Protection of the Environment Operations Act 1997*. It is understood that a condition of such a licence is that the sewerage sludge must have been treated by the sewerage plant operator to standards approved by the EPA. These standards, titled "*Environmental Guidelines: Use and Disposal of Biosolids Products"* were produced with considerable input by NSW Agriculture scientists.

39. A recent initiative of the NSW Government relevant to several aspects of this review, including the use of animal manure and seaweed to increase agricultural production, is the establishment of Safe Food Production NSW (Safe Food). Safe Food was established via the introduction of the *Food Production (Safety) Act 1998*, which was passed by Parliament in November 1998.

40. When fully implemented, Safe Food will be responsible for ensuring the safe production, processing, wholesale, and transport of foods for human consumption from the paddock or ocean to the back door of the retail shop.

41. Safe Food will develop and implement co-regulatory Food Safety Schemes similar to those now operating in the dairy and meat industries and recently established in the oyster industry. These schemes will be based on the preventative methodology known as Hazard Analysis and Critical Control Point (HACCP). HACCP requires the systematic identification and control of food safety risks at all points in the supply chain. Food Safety Schemes will be developed in stages over the next four to five years, beginning with industry sectors involving the highest food safety risks.

Competition Restrictions - Assessment

42. Enforcement of compliance with registered particulars and composition standards is minimal, however the Review Group found that manufacturers of soil improving agents and trace element products face significant commercial incentives to provide quality products.

43. With the removal of registration requirements for soil improving agents in most states now complete, and with the remaining jurisdictions currently in the process of removing their requirements, the application of Mutual Recognition Policy means that manufacturers of soil improving agents in NSW face additional compliance costs compared to their interstate competitors.

44. In addition, the current requirements in the Act to register every product may be restrictive in that some manufacturers who tailor products to the requirements of particular growers may be disadvantaged. Furthermore, small 'boutique' companies may be unable to afford the

registration of each individual product and may therefore forego the opportunity to service niche customers.

45. In relation to the protection provided to proprietors of brand names by the *Fertilisers Act 1985*, the Review Group acknowledged that the intention of the provision to allow the Director-General to refuse to register a particular brand name is not to create a proprietary right to a brand name, but rather to ensure that correct information relating to a particular product is available to consumers. Such information includes the name of the registered proprietor of the brand name and other registered particulars.

46. The Review Group noted that although the *Fertilisers Act 1985* allows the Director-General to refuse to register a brand name and it is an offence under the legislation for a dealer to sell an unregistered soil improving agent, the legislation may provide insufficient incentive for a dealer to stop selling such a product and the Act has no provision for providing compensation for damages to a proprietor whose registered brand name is used by another proprietor.

47. The Review Group was of the opinion that the sale of soil improving agents is not unique in comparison to the sale of other goods, and thus regulatory measures in addition to those applying to the proprietor of any type of good, are unwarranted.

48. A registered trademark is the primary way to protect a product name and prevent it from being used by others, although common law also provides some protection for unregistered trademarks (although it may be costly to pursue an action).

49. A trademark is registered by the Trade Marks Office, which administers the Commonwealth *Trade Marks Act 1995*. According to that Act, a trade mark can be a letter, number, word, phrase sound, smell, shape, logo, picture, aspect of packaging or a combination of these. It cannot be something that other traders may wish to use to promote or describe their goods or services. A registered trademark provides an exclusive right to use it within Australia for the goods and services for which it is registered. If an infringement of a registered trade mark is proven in court, an injunction may be granted, subject to any condition the court thinks fit, and at the option of the plaintiff but subject to certain conditions, the court may grant damages or an account of profits.

50. The Review Group concluded that there was no public benefit to be obtained from additional legislation to protect brand names and that those provisions in the *Fertilisers Act 1985* relating to registration should be removed.

Recommendation 3.
The Review Group recommends that the requirements imposed by the Fertilisers Act 1985 relating to the registration of brand names for soil improving agents be removed.

51. Review Group members were of the opinion that a number of elements of the current composition standards for fertilisers prescribed in Schedule 1 of the *Fertilisers Regulation 1997* relate primarily to quality standards above those required to provide for food safety, market access and environmental protection, and that it is no longer justifiable to retain these provisions. These particular elements include:

- the minium content of phosphorus, nitrogen or potassium which fertilisers must contain;

- composition standards for a fertiliser described as single superphosphate, double superphosphate and triple superphosphate;
- composition standards for a fertiliser described as rock phosphate;
- composition standards for a fertiliser containing bone meal; and
- the application of grades to liming materials.

Recommendation 4.
The Review Group recommends that the following requirements imposed by the Fertilisers Act 1985 be removed:

- ***the minium content of phosphorus, nitrogen or potassium that fertilisers must***
- ***contain;***
- ***composition standards for a fertiliser described as single superphosphate, superphosphate and triple superphosphate;***
- ***composition standards for a fertiliser described as rock phosphate;***
- ***composition standards for a fertiliser containing bone meal; and***
- ***the application of grades to liming materials.***

52. Currently, the legislation imposes restrictions on representations made by dealers in regard to organic fertilisers, organically based fertilisers, fertilisers containing organic matter, and blood and bone fertilisers. The legislation sets minimum composition requirements which must be met for dealers to be able to make claims in regard to the above types of fertilisers. The Review Group found that these requirements do not address food safety, market access or environment protection and, as such, concluded that retention of these restrictions could not be justified.

53. The Review Group further found that in the event of the removal of these restrictions, if there was sufficient demand for information relating to the organic or blood and bone content of a fertiliser product, the market would reward those dealers which provided this information. Thus, rather than arbitrary composition standards relating to organic and blood and bone content of fertilisers being imposed by legislation, consumer demand would encourage dealers to provide consumers with desired information on the organic or blood and bone content of a particular product.

54. When dealers provide information relating to the organic or blood and bone content of a fertiliser product, consumer recourse is provided in relation to the truth of these representations through the *Fair Trading Act 1987*.

Recommendation 5.
The Review Group recommends that the restrictions on representations made by dealers imposed by the Fertilisers Act 1985 relating to the sale of organic fertilisers, organically based fertilisers, fertilisers containing organic matter, and blood and bone fertilisers, be removed.

55. The Review Group concluded that provisions restricting the concentrations of heavy metals in fertilisers and trace element products should be maintained, on the basis of food safety, market access and environment protection, and should provide for the inclusion of any other contaminants which are considered (either now or in the future) to have a significant potential

to influence food safety, market access or environment protection, and for these restrictions to apply to all soil improving agents and trace element products.

Recommendation 6.
The Review Group recommends that the requirements imposed by the Fertilisers Act 1985 restricting the concentrations of heavy metals in fertilisers and trace element products be maintained and expanded to provide for other contaminants which are considered (either now or in the future) to have a significant potential to influence food safety, market access or environment protection and for these restrictions to apply to all soil improving agents and trace element products.

56. In the case of nitrogen, phosphorus and potassium, the Review Group concluded that these elements may contribute to adverse off-site effects such as stream contamination leading to reduced water quality and biodiversity. Labelling requirements in relation to these elements would assist in informing consumers of content and thereby facilitate the more efficient application of fertiliser and thereby reduce adverse off-site environmental impacts. Similarly, the Review Group concluded that the inefficient application of liming materials may also result in adverse environmental outcomes. For example, inefficient application of calcium, magnesium or sulphur may result in increased soil acidity leading to reduce vegetation cover, which in turn results in increased water infiltration, accessions to ground water and subsequent adverse off-site effects such as rising water tables and increased salinity. The Review Group therefore concluded on environment protection grounds, the legislation should ensure that users of soil improving agents and trace element products are properly informed of the contents of parcels containing soil improving agents and trace element products by an effective system of labelling.

57. Those requirements of the current labelling provisions which the Review Group concluded were necessary to maintain on this basis included:

- in the case of a fertiliser, the proportion in which any nitrogen, phosphorus or potassium, or any prescribed form of these, occurs in the fertiliser;
- in the case of a liming material, the proportion in which any calcium, magnesium or sulphur, or any prescribed form of these, occurs in the liming material; and
- in the case of a trace element product, the quantity of trace element contained in the parcel; the respective forms in which each trace element occurs; and the respective proportions in which each form of trace element occurs.

44. As stated in paragraph 3.31 (and in Section 16(2) of the Act), the above labelling provisions do not apply to the sale of a soil improving agent to a manufacturer of soil improving agents, where:

- the soil improving agent comprised in the sale consists of a bulk lot of 90 kilograms or more and the dealer concerned furnishes the purchaser with an invoice containing the required particulars; or
- where the soil improving agent is obtained, in the presence of the purchaser, from a parcel which is marked with the required particulars.

45. The Review Group concluded that the first of these exceptions, including the requirement that the dealer concerned furnishes the purchaser with an invoice containing the required

particulars, should be maintained. The Review Group further concluded, however, that no exception should be provided when the soil improving agent is obtained, in the presence of the purchaser, from a parcel which is marked with the required particulars. The Review Group found that this exception was inappropriate as consumers were not provided with a written statement detailing the contents of the parcel.

46. It should be noted that the present provisions of the legislation regarding these labelling requirements for soil improving agents outlined in paragraph 3.93 are imposed by Sections 7(3) and 16(1) of the Act. Section 7(3) specifies the particulars which must be entered in the register for a brand name to be registered. Section 16(1) states that a dealer shall not sell a soil improving agent under a registered brand name unless it is contained in a parcel which is marked with a number of particulars, including the registered particulars in respect of the brand name under which the soil improving agent is sold.

47. Thus, given the Review Group's recommendation that all requirements imposed by the *Fertilisers Act 1985* relating to the registration of brand names for soil improving agents be removed, the labelling provisions for soil improving agents in the current legislation will also be made redundant. New provisions relating to the desired labelling requirements for soil improving agents will therefore need to be drafted.

Recommendation 7.
The Review Group recommends that the following labelling requirements imposed by the Fertilisers Act 1985 be maintained:

- ***in the case of a fertiliser, the proportion in which any nitrogen, phosphorus or potassium, or any prescribed form of these, occurs in the fertiliser;***
- ***in the case of a liming material, the proportion in which any calcium, magnesium or sulphur, or any prescribed form of these, occurs in the liming material; and***
- ***in the case of a trace element product, the respective forms in which each trace element occurs; and the respective proportions in which each form of trace element occurs.***

Recommendation 8.
The Review Group also recommends that the alternate information provision requirements imposed by the Fertilisers Act 1985 in relation to the sale of a soil improving agent to a manufacturer of soil improving agents, where the soil improving agent comprised in the sale consists of a bulk lot of 90 kilograms or more [paragraphs (a) and (b) of subsection 16(2)], be maintained. The Review Group further recommends, however, that the exception provided when the soil improving agent is obtained, in the presence of the purchaser, from a parcel which is marked with the required particulars [paragraph (c) of subsection 16(2)], be removed.

62. The Review Group concluded that the current labelling requirement in relation to the effectiveness of a liming material should be removed as this method of calculating a figure to represent the effectiveness of a particular product may be misleading or meaningless depending on the circumstances surrounding the proposed use of the product.

63. As noted in paragraph 3.92, adverse environmental impacts may result from the inefficient application of nitrogen, phosphorus, potassium, calcium, magnesium or sulphur. Furthermore,

in relation to liming materials, product effectiveness is a function not only of the elements it contains, but also of particle size. The Review Group therefore concluded that there are grounds on the basis of environment protection, for requiring that information on particle size distribution be provided on labels.

64. As this is an issue which the Review Group believes can be more effectively addressed when drafting the subordinate legislation, it was concluded that provision should be maintained in the primary legislation to allow for the possible inclusion of alternate labelling requirements, but that the detail of these requirements be determined when the subordinate legislation is drafted.

Recommendation 9.
The Review Group recommends that the current labelling requirements imposed by the Fertilisers Act 1985 in relation of the effectiveness of a liming material be removed, but that provision be maintained to allow for the possible inclusion of alternate labelling requirements, such as particle size distribution.

65. In relation to all the above labelling requirements, in the event that the current legislative arrangements continue, or alternative legislative arrangements are introduced, the Review Group concluded that it be an offence under these arrangements for non-compliance with these requirements. The Review Group noted that the provisions of the *Fair Trading Act 1987*, which make it an offence for a label attached to a product to contain false statements, would enable enforcement of the truth of this labelling information. The Review Group, however, concluded that an offence provision should be retained in the *Fertilisers Act 1985* so that there is still the ability, should it prove administratively difficult to enforce under the *Fair Trading Act 1987*, to prosecute an offender for selling a soil improving agent unless it conforms to the required particulars marked on the parcel in which it is contained.

Recommendation 10.
The Review Group recommends that non-compliance with labelling requirements imposed by the Fertilisers Act 1985 be an offence under the Fertilisers Act 1985. The Review Group also recommends that it be an offence under the Fertilisers Act 1985 to sell a soil improving agent or trace element product unless it conforms to the required particulars marked on the parcel in which it is contained.

66. The Review Group, after considering the requirements relating to warning labels contained in Schedule 3 of the *Fertilisers Regulation 1997*, found that the outcome intended to be achieved by a number of the warning labels to be unclear. However, the Review Group considered that it was not the appropriate body to verify the appropriateness of the list of soil improving agents specified as requiring warning labels, nor the suitability or correctness of the specified warning labels. The Review Group concluded that this issue can be addressed when drafting the subordinate legislation, and that provision be maintained in the primary legislation to allow for the inclusion of warning label requirements, but that the detail of these requirements be determined when the subordinate legislation is drafted. Specifically, the Review Group concluded that the warning label requirements imposed by Schedule 3 of the *Fertilisers Regulation 1997* should be reviewed, with labels only being required for those soil improving agents which pose a risk to food safety, trade or the environment. Consideration should also be given to the correctness and suitability of the specified warning labels.

67. A related issue is that some of the specified warning labels appear to be addressing user occupational health and safety. The Review Group was doubtful about the suitability of addressing occupational health and safety issues in the *Fertilisers Act 1985*, rather than in generic occupational health and safety legislation. If it is considered to be the best approach, however, the Review Group concluded that the provision for warning labels to be attached to soil improving agents which pose a risk to human health and safety, should be retained.

Recommendation 11.
The Review Group recommends that the warning label requirements imposed by Schedule 3 of the Fertilisers Regulation 1997 should be reviewed, with labels only being required for those soil improving agents which pose a risk to food safety, trade or the environment. Consideration should also be given to the correctness and suitability of the specified warning labels.

Recommendation 12.
The Review Group recommends that if during the review of the warning label requirements imposed by Schedule 3 of the Fertilisers Regulation 1997 it is deemed appropriate, then the provision for warning labels to be attached to soil improving agents which pose a risk to human health and safety should be retained.

68. In relation to the regulation of biosolids the Review Group concluded that the use of sewerage sludge as fertiliser is adequately addressed by existing EPA legislation.

69. The Review Group concluded that food safety was the major hazard posed by the use of animal manure and seaweed to enhance the productive capacity of agricultural land. As Safe Food is the new authority which will coordinate and streamline food safety regulations across the State, the Review Group concluded that Safe Food should consider measures to satisfactorily address this practice.

70. The Review Group also concluded, however, that scope should be provided in the *Fertilisers Act 1985* for regulation to control the use of animal manure and seaweed to enhance the productive capacity of agricultural land, if it proves necessary. This scope, however, would be restricted so that the substances which the *Fertilisers Act 1985* regulates could only be expanded to include animal manure and seaweed if circumstances dictated that Safe Food was unable to adequately address this practice.

Recommendation 13.
The Review Group recommends that Safe Food be requested to consider measures which address the hazards posed to human health by the use of animal manure and seaweed to enhance the productivity of agricultural land. The Review Group also recommends, however, that scope be provided in the Fertilisers Act 1985 for regulation to control this practice, if it proves necessary.

STOCK FOODS ACT 1940

71. The sale of stock food in NSW is controlled by the *Stock Foods Act 1940*. The legislation contains provisions which:

- set limits for foreign ingredients (prohibited substances; certain weed seeds and plants; toxic compounds; antioxidants, minerals and urea; and chemical residues);
- require the identification of added salt and urea; and
- require labelling to indicate the particular class of stock, and the age or stage of production of such stock, which the product will maintain or for which it will promote the growth or productive capacity;
- require labelling to indicate that the product does or does not contain ruminant material, or alternatively, to indicate the specific species of stock which the product should be fed to; and
- require an information statement with bulk sales.

Objectives

72. The Review Group clarified the objectives of the Act by reference to the preamble to the *Stock Foods Act 1940* which states that it is:

"An Act to regulate the sale of food for stock and for other purposes."

73. The Review Group agreed that the objectives relate more to matters of process than to particular outcomes and need to be redefined to better comply with Competition Policy principles. At present, the central emphasis of the Act is on food safety, animal welfare and market access.

74. The Review Group concluded that government intervention in relation to the sale of stock foods in NSW is warranted on the basis of market failures relating to food safety, animal welfare and market access.

Recommendation 14.
The Review Group recommends that the primary objectives of the Stock Foods Act 1940 should be to:

- ***protect human health by intervening early in the agricultural production process. In particular to ensure that unsafe levels of contaminants as defined by domestic food standards authorities do not transfer to the human food chain by their excessive presence in food producing animals;***
- ***facilitate international trade by supporting initiatives to ensure that livestock and meat products destined for export markets comply with the contaminant requirements of international trading partners; and***
- ***protect the welfare of animals consuming stock foods.***

Competition Restrictions

75. The Review Group found that the major provisions of the *Stock Foods Act 1940*, namely:

- labelling requirements for manufactured stock food; and
- composition standards for stock food (limits on 'foreign ingredients'),

may all restrict competition in some way.

Labelling requirements for manufactured stock food

76. Labelling standards which relate to product quality may impose unnecessary costs on stock food producers and provide few benefits to consumers. Restrictive labelling standards may also impede innovation in the labelling and marketing of stock foods.

77. Conversely, inadequate labelling of stock foods may impose costs on consumers, where they are not able to adequately judge the composition of a stock food and where this may have spillover effects on human health, animal welfare and the trade of agricultural products.

Composition standards for stock food (limits on 'foreign ingredients')

78. The legislation restricts the way in which a stock food manufacturer may produce a stock food by imposing maximum allowable proportions or amounts of certain substances to be contained in stock foods. These limits on foreign ingredients can be justified if they are effectively addressing animal and human welfare/health and trade requirements.

79. In addition to the limits on foreign ingredients, the Act empowers, but the regulations do not make provision for, regulating or prohibiting the incorporation of a veterinary chemical product in a stock food to produce a medicated stock food. NSW Agriculture advised the Review Group that these powers have not been implemented because they are considered to be adequately covered by other (national) legislation.

Competition Restrictions - Assessment

80. In relation to the labelling requirements of the legislation, while acknowledging the associated compliance costs, the Review Group concluded that they provide benefits which significantly outweigh these costs. Consumers are better informed of the contents of stock food and as a result, benefits are delivered in the form of animal welfare, market access and human health. As stated in submissions, the successful operation of quality assurance systems operating in the livestock industry depend on stock food being appropriately and accurately labelled.

81. In relation to composition standards, the Review Group concluded that restrictions on potentially harmful ingredients in stock food could not be effectively achieved by alternative non-regulatory approaches. The legislation provides a means of recourse for effected parties to ensure the integrity of stock food. As highlighted in submissions, the legislation ensures that stock food manufacturers are supplied with non-contaminated ingredients which without legislation, may prove near impossible. The Review Group believed that the associated compliance costs are negligible in comparison with the costs that would be borne by both industry and consumers if a problem was to arise. An example of an incident involving

contaminated stock food which cost an industry and indeed the whole economy of a country an enormous amount of money was the detection of dioxin in poultry and pig feed in Belgium.

82. As discussed in paragraph 4.28, the provision in the Act to regulate or prohibit veterinary chemical products in a stock food has not been implemented because this matter is sufficiently covered by other legislation.

83. The Review Group therefore concluded that with the exception of the provision to regulate or prohibit veterinary chemical products in a stock food, the requirements imposed by the *Stock Foods Act 1940* be maintained.

Recommendation 15.
The Review Group recommends that the powers provided by the Stock Foods Act 1940, with the exception of the provision to regulate or prohibit veterinary chemical products in a stock food, be maintained.

STOCK MEDICINES ACT 1989

84. The *Stock Medicines Act 1989* currently regulates the 'use' functions of stock medicines. The major provisions in the legislation provide powers to:

- prohibit possession of certain stock medicines;
- control the use of registered and unregistered stock medicines on animals;
- control the prescription or supply of stock medicines by veterinary surgeons;
- restrict the advertising of certain stock medicines;
- require buyers of treated stock to be notified of unexpired withholding periods; and
- require sellers of stock food treated with a stock medicine to inform buyers that the food has been so treated, and to provide buyers with certain written details including the relevant withholding period.

Objectives

85. The Review Group clarified the objectives of the Act by reference to the preamble to the *Stock Medicines Act 1989* which states that it is:

"An Act relating to medicines for stock and other animals for the purposes of enhancing the quality of agricultural production, protecting the environment and safeguarding the health of stock and other animals; and for other purposes."

86. From this preamble it appears that the principal objectives of the *Stock Medicines Act 1989* are to protect human and animal health, the environment and trade in animal products, by requiring the proper and appropriate use of stock medicines.

87. Though these appear to be the intended outcomes of the legislation, the Review Group agreed that there was a difference between these outcomes and the apparent purposes of the provisions in the Act. At present, the Act appears to be addressing issues in regard to food safety, market access and animal welfare. The Review Group observed that there is little scope or likelihood of the Act effectively addressing environmental protection concerns.

88. The Review Group concluded that government intervention in relation to the use of stock medicines in NSW is warranted on the basis of the existence of market failures relating to food safety, animal welfare and market access.

Recommendation 17.
Further to Recommendation 1, the Review Group recommends that the primary objectives of the Stock Medicines Act 1989 should be to:

- ***protect human health by intervening early in the agricultural production process. In particular to ensure that unsafe levels of chemical residues as defined by domestic food standards authorities do not transfer to the human food chain by their excessive presence in food producing animals;***
- ***facilitate international trade by supporting initiatives to ensure that livestock and meat products destined for export markets comply with the chemical residue requirements of international trading partners; and***
- ***protect the welfare of animals treated with stock medicines.***

Competition Restrictions

89. The Review Group found that the major provisions of the *Stock Medicines Act 1989*, namely:

- prohibiting possession of certain stock medicines;
- controlling the use of registered and unregistered stock medicines;
- controlling the prescription or supply of stock medicine by veterinary surgeons;
- requiring buyers of treated stock to be notified of unexpired withholding periods;
- requiring sellers of stock food treated with a stock medicine to inform buyers that the food has been so treated, and to provide buyers with certain written details including the relevant withholding period; and
- restricting the advertising of certain stock medicines.

may all restrict competition in some way.

<u>Prohibiting possession of certain stock medicines; controlling the use of registered and unregistered stock medicines; and controlling the prescription or supply of stock medicine by veterinary surgeons</u>

90. Prohibiting possession of certain stock medicines unless prescribed by a veterinary surgeon, and restricting the use of some such medicines to veterinary surgeons may restrict access to those medications by potential users of those products such as other animal care providers and farmers. At the same time, there are strong public interest reasons for these restrictions to be put in place.

91. Submissions concentrated on the reasons for maintaining the current restrictions imposed by the *Stock Medicines Act 1989*. Food safety and international trade, animal welfare and informed consent, integrated case management and reduced reliance on stock medicines, control over restricted drugs (human health), and the availability of effective drugs were some of the potential market failures identified in submissions to support continuation of the legislation.

Requiring buyers of treated stock to be notified of unexpired withholding periods; and requiring sellers of stock food treated with a stock medicine to inform buyers that the food has been so treated, and to provide buyers with certain written details including the relevant withholding period

92. The requirement for buyers of treated stock to be notified of unexpired withholding periods and the requirement for sellers of stock food treated with a stock medicine to inform buyers that the food has been so treated may ensure that buyers are made aware of the potential for such treated stock, or stock fed such treated stock feed, to be in breech of the applicable MRL's.

93. Where these requirements are addressing issues related to food safety and market access, i.e., instances where because buyers are not made aware of these facts there is the potential for adverse impacts on either human health or industry access to particular markets, then they may contribute to public policy objectives.

Advertising

94. Restrictions on advertising eliminate a normal form of competition between businesses in that consumers are less informed about product availability and prices. Practitioners who may be able to offer these products at a lower price are restricted from advertising this fact and hence the cost of prescribed drugs to consumers may be higher than otherwise. In the absence of greater consumer awareness through advertising, authorised persons may be less accountable in their use of drugs, they may be influenced to a greater extent by favourable selling arrangements with drug companies, and may be more likely to prescribe 'unnecessarily' expensive products.

95. Alternatively, these restrictions may reduce the pressure placed on authorised persons by drug companies and owners of animals to over prescribe certain substances or to use inappropriate substances. They may also reduce demand for certain drugs and associated drug resistance problems.

96. Further concerns expressed by the industry members of the Review Group were the increased risk of chemical residues from increased usage and the fact that advertising costs will be recouped by higher prices. Both the processor and producer members of the Review Group were opposed to open advertising of those substances listed on Schedule Four of the Poisons List for these reasons.

97. Of relevance to the advertising restrictions imposed by the *Stock Medicines 1989* is a national review of legislation and regulation pertaining to drugs, poisons and controlled substances. The Terms of Reference for the national review include examining inconsistencies of regulation and administration of that regulation in relation to advertising restrictions.

Suspended registration and labelling provisions

98. Another issue discussed by the Review Group was those provisions of the *Stock Medicines Act 1989* relating to registration and labelling requirements that were suspended when provision was made for the *Agvet Code* to apply in NSW.

99. The NRA's process of evaluation of agricultural and veterinary chemical products, which by definition do not include stock food or fertilisers, is required to account for risks to human health and safety, property, the environment and overseas trade, and is primarily based on efficacy and concern to prevent excessive chemical residues in food and fibre products. The process is designed to ensure that products from a farming system where agvet chemicals are used strictly in accordance with label instructions, will not contain residues in excess of MRLs set by the NRA and adopted by the Australia New Zealand Food Authority.

Competition Restrictions - Assessment

100. As stated in paragraphs 98-99 above, the registration and labelling requirements of the *Stock Medicine Act 1989* were suspended with the application of the *Agvet Code* in NSW. As there is no reason for maintaining these provisions in the legislation, the Review Group concluded these should be removed.

101. As stated in submissions, there are strong public interest reasons for the restrictions imposed by prohibiting possession of certain stock medicines, controlling the use of registered and unregistered stock medicines, and controlling the prescription or supply of stock medicine by veterinary surgeons. The Review Group concluded that alternative less competition restricting arrangements would not be effective in addressing concerns relating to animal welfare, food safety and market access. Access to international markets as well as consumer confidence in domestic markets are dependent on legislation being maintained which addresses issues associated with the use of stock medicines. The Review Group therefore concluded that these restrictions need to be maintained and are the most effective means of achieving the recommended objectives.

102. In relation to the information disclosure requirements associated with the sale of stock and stock food treated with stock medicines, the Review Group concluded that these are a pro-active means of ensuring product integrity. The Review Group further concluded that legislation is necessary to ensure the disclosure of such information, and as such, these requirements need to be maintained.

103. During the review process, the Review Group became aware of a deficiency in the *Pesticides Act 1978* which was relevant to the provision in the *Stock Medicines Act 1978* requiring buyers of stock treated with stock medicines to be notified of unexpired withholding periods.

104. It came to the attention of the Review Group that there are no similar provisions in the *Pesticides Act 1978* in regard to stock of a food producing species which has been treated by a veterinary chemical product which is regulated under that Act.

105. The Review Group concluded that the *Stock Medicines Act 1989* should be expanded to require buyers of stock of a food producing species treated with either a stock medicine or a pesticide (as defined), to be notified that the stock has been so treated, and when the relevant withholding period will expire.

106. In relation to the current restrictions on advertising of stock medicines imposed by the *Stock Medicines Act 1989*, the Review Group was undecided on whether these restrictions should be retained or repealed. As noted in paragraphs 5.27 - 5.29, a national review of drugs, poisons and controlled substances legislation is currently underway which while it will not be

explicitly reviewing the provisions in the *Stock Medicines Act 1989*, it's recommendations may have consequential impacts on the advertising restrictions in the *Stock Medicines Act 1989*. As such, the Review Group concluded that further consideration should be given to the issue following the completion of the national review of drugs, poisons and controlled substances legislation.

Recommendation 16.
The Review Group recommends that the powers provided by the Stock Medicines Act 1989, with the exception of the registration and labelling provisions, be maintained.

Recommendation 17.
The Review Group recommends that further consideration be given to the advertising restrictions imposed by the Stock Medicines Act 1989 following the completion of the national review of drugs, poisons and controlled substances legislation.

Recommendation 18.
The Review Group recommends that the notification requirements imposed by the Stock Medicines Act 1989 be expanded to require buyers of stock of a food producing species treated with either a stock medicine or a pesticide (as defined), to be notified that the stock has been so treated, and when the relevant withholding period will expire.

STOCK (CHEMICAL RESIDUES) ACT 1975

107. The *Fertilisers Act 1985*, the *Stock Foods Act 1940* and the *Stock Medicines Act 1989* provide a set of regulatory controls over the chemical inputs to agriculture. In the event of stock becoming contaminated, however, the *Stock (Chemical Residues) Act 1975* provides for government intervention to stop contaminated stock from progressing further up the food chain.

108. The *Stock (Chemical Residues) Act 1975* enables the Minister to declare by order that stock containing more than a specified concentration of a specified residue, or that have been treated with or exposed to a specified stock medicine or other specified substance, are chemically affected. The Minister is not to make such an order unless of the opinion that stock to which the order relates are, or are likely to become, degraded on account of the relevant residue, treatment or exposure.

109. For the purposes of these provisions, stock are degraded if they:

- are unfit for sale or export for human consumption; or
- pose a danger to human or animal health or to the environment; or
- are detrimental to export or other trade.

82. The major provisions of the legislation provide powers to:

- obtain entry to land, examine records, ask questions and test stock, fodder, soil, etc.;
- detain and seize stock known or suspected of being chemically affected;
- regulate the movement of stock known or suspected of being chemically affected;
- order the destruction or disposal of chemically affected stock considered unsalvageable;

- order the destruction or disposal of fodder which, if used, would cause stock to become chemically affected;
- restrict or prohibit grazing on land to prevent stock from becoming chemically affected;
- prohibit misrepresentations on sale of stock after treatment with specified substances;
- prohibit false or reckless statements in regard to the chemical residue status of stock;
- enable NSW Agriculture to disclose information relating to residues in stock and on land where that information is disclosed in good faith.

Objectives

111. The Review Group clarified the objectives of the Act by reference to the preamble to the *Stock (Chemical Residues) Act 1975* which states that it is:

"An Act to prevent the slaughter for human consumption of stock which contain certain concentrations of residues of chemicals or which are otherwise chemically affected; to prevent stock from becoming chemically affected; and for purposes connected therewith."

112. The Hansard record of the second reading speech of the *Stock (Chemical Residues) Bill 1975* states:

"*the bill is a new measure to protect human health. Its subject-matter, however, is not the food we eat but the livestock that may be slaughtered and turned into meat for human consumption*."

113. From this it appears that the principal aim of the legislation is the protection of human health by intervening early in the meat production system in an effort to ensure that meat and meat products supplied to consumers are safe (at least in the context of chemical residues).

114. Recent amendments in 1996 appear to have extended the objectives of the legislation to include market access, environmental protection and animal welfare. The second reading speech of the *Stock (Chemical Residues) Amendment Bill 1995* states "*this bill extends the existing legislative mechanism in the Stock Chemical Residues Act for regulation of stock to comply with the requirements of our international trading partners, consumers and the environment.*"

115. Animal welfare is not mentioned in this extract, but as detailed in paragraph 109 above, the amendments enable stock to be declared as degraded if they pose a danger to animal health.

116. The Review Group found that the objectives of the *Stock (Chemical Residues) Act 1975* need to be redefined to comply with Competition Policy principles. At present, the Act is addressing issues related to food safety and market access. The Review Group concluded that there is little scope or likelihood of the Act effectively addressing animal welfare or environmental protection concerns.

117. The Review Group concluded that government intervention in relation to farm chemical residues in livestock in NSW is warranted on the basis of the existence of market failures relating to food safety and market access.

Recommendation 19.
The Review Group recommends that the primary objectives of the Stock (Chemical Residues) Act 1975 should be to:

- ***protect human health by intervening early in the agricultural production process. In particular to ensure that unsafe levels of chemical residues as defined by domestic food standards authorities do not transfer to the human food chain by their excessive presence in food producing animals; and***
- ***facilitate international trade by supporting initiatives to ensure that livestock and meat products destined for export markets comply with the chemical residue requirements of international trading partners.***

Competition Restrictions

118. The Review Group found that the major provisions of the *Stock (Chemical Residues) Act 1975*, namely:

    - restrictions on stock that are detected as being, or suspected of being 'chemically affected'; and
    - a group of other provisions which provide powers to: order the destruction or disposal of fodder which, if used, would cause stock to become chemically affected; restrict or prohibit grazing on land to prevent stock from becoming chemically affected; prohibit misrepresentations on sale of stock after treatment with specified substances; and prohibit false or reckless statements in regard to the chemical residue status of stock being sold,

    may all restrict competition in some way.

119. The powers provided by the *Stock (Chemical Residues) Act 1975* represent direct constraints on the management choices of livestock producers. These powers are highly restrictive and appear to be based on the premise that in certain circumstances producers may fail to adopt management practices which ensure that stock yield products which comply with relevant chemical residue standards.

120. The nature of the majority of the powers provided by the legislation is such that they are utilised only under specific circumstances, i.e., when either a chemical residue problem has been detected or is suspected. Given the increasing emphasis being placed by consumers on food safety and the sensitivity of key export markets to chemical residues, the legislation may play an important back-up role in addressing food safety concerns and averting any adverse impacts on trade. In addition it may improve incentives for the generation and dissemination of information to enable buyers to make more informed decisions about the residue status of livestock products.

121. It is important to note that industry based developments in quality control and assurance, such as Cattlecare, Flockcare and the National Vendor Declaration scheme for cattle, encourage efficiency gains in meeting public policy objectives in relation to food safety and access to overseas markets associated with chemical residues. Furthermore, strategic alliances are also being formed along production chains with both quality and food safety in mind.

122. A recent initiative aimed at improving product integrity and market access is the National Livestock Identification Scheme (NLIS). The NLIS is an initiative of the national cattle industry and has been developed by industry in consultation with the State and Commonwealth Governments. It provides for lifetime individual identification of cattle and enhances the current transaction tagging system for monitoring and traceback of both stock diseases and chemical residues. The NLIS is currently a voluntary scheme but requires legislative underpinning (in the form of Commonwealth legislation) to allow it to operate effectively.

Competition Restrictions - Assessment

123. The Review Group concluded that although industry based systems of identification and quality assurance should be encouraged and that regulatory arrangements should not act as a disincentive to their further development, nevertheless, government intervention could not be totally removed. The Review Group were of the opinion that in the absence of legislation, the NSW Government would be unable to adequately control adverse chemical residue problems, should they occur.

124. The livestock industry is the source of chemically affected stock and is the primary beneficiary of the *Stock (Chemical Residues) Act 1975*. As stated in submissions, industry requires this legislation to ensure consumer confidence and market access. A common principle of current policy and regulatory design is that if particular groups are able to be identified as the 'polluters', then there may be a case for those individuals, or their industry, to fund the regulatory activity.

125. The Review Group therefore concluded that the current legislation should be retained, but with the proviso that any activities of government undertaken in accordance with the Act, should be funded by the livestock industry. This will require the livestock industry to develop appropriate funding arrangements.

Recommendation 20.
The Review Group recommends that the powers provided by the Stock (Chemical Residues) Act 1975 be maintained, but with the proviso that any activities of government undertaken in accordance with such requirements be funded by the livestock industry.

PART 7 OF THE PESTICIDES ACT 1978

126. In NSW, while regulation of the use of stock medicines, fertilisers and stock foods remains primarily within the jurisdiction of NSW Agriculture, the lead agency for chemical products policy and regulation generally, including farm pesticides, is the NSW Environment Protection Authority (EPA). The *Pesticides Act 1978* is administered by the EPA.

127. The *Pesticides Act 1978* regulates the use of pesticides, and requires users of registered pesticides to read and comply with label instructions (label instructions are approved by the NRA as part of the registration process). The provisions in Part 7 allow for the prevention of certain foodstuffs containing prohibited residues from becoming available for human consumption.

Objectives

128. The Review Group clarified the objectives of Part 7 of the Act by reference to the preamble to the *Pesticides Act 1978* which states that it is:

"An Act to control the use and possession of pesticides, to control the application of pesticides and fertilisers from aircraft, and to provide for the prevention of certain foodstuffs containing prohibited residues from becoming available for consumption."

129. It appears that the last phrase of this preamble, i.e., *"to provide for the prevention of certain foodstuffs containing prohibited residues from becoming available for consumption"*, is most applicable to Part 7 of the *Pesticides Act 1978*.

130. The Review Group concluded that government intervention in relation to farm chemical residues in plants and plant produce (other than produce that is a result of a manufacturing process) in NSW is warranted on the basis of the existence of market failures relating to food safety and market access.

Recommendation 21.
The Review Group recommends that the primary objectives of Part 7 of the Pesticides Act 1978 should be to:

- ***protect human health by intervening early in the agricultural production process. In particular to ensure that unsafe levels of chemical residues as defined by domestic food standards authorities do not transfer to the human food chain by their excessive presence in plants and plant produce (other than produce that is a result of a manufacturing process); and***
- ***facilitate international trade by ensuring that plants and plant produce (other than produce that is a result of a manufacturing process) destined for export markets comply with the chemical residue requirements of international trading partners.***

Competition Restrictions

131. The Review Group found that the major provisions of Part 7 of the *Pesticides Act 1978*, namely directions for foodstuffs containing unacceptable levels of chemical residues, may restrict competition in some way.

132. These provisions place restrictions on the movement and/or sale of certain foodstuffs and as a result may potentially cause inconvenience and/or impose costs on either the owner of a prescribed foodstuff, the occupier of the place where the foodstuff is situated, or the person in charge of any vehicle, aircraft or vessel in or on which the foodstuff is situated.

133. It is commonly considered that the same level of regulation for residues and contaminants in livestock and livestock products is not currently afforded to plants and plant produce. However, it appears that there currently are some instruments to deal with residues in plants and plant produce, in the form of Part 7 of the *Pesticides Act 1978* and the *Food Act 1989*, but that these powers are generally not used.

134. In addition, the powers in Part 7 of the *Pesticides Act 1978* do not appear to be constrained strictly to farm-level intervention, but appear to extend right through the marketing chain (other than to produce that is the result of a manufacturing process).

135. NSW Agriculture undertakes a monitoring program in relation to the level of chemical residues present in produce sold at the Flemington fruit and vegetable market in Sydney. This involves officers from NSW Agriculture randomly taking samples of produce sold at the market and sending these for laboratory testing. The Review Group understands that where testing indicates that a sample contains a residue, but which is below the MRL for that particular chemical, NSW Agriculture provides an advisory service, informing the producer of the occurrence and encouraging them to address the issue. Where testing indicates that the sample contained a residue level above the MRL for that particular chemical, NSW Agriculture informs the EPA. The Review Group understands that the EPA has not undertaken action using the powers provided by Part 7 of the *Pesticide Act 1978* because they have been unable to obtain the necessary evidence to enable enforcement action. The primary emphasis of EPA investigations of such cases is to determine whether there is evidence of an offence under other parts of the *Pesticides Act 1978*. In instances where the EPA is unable to take action, NSW Agriculture may be asked to provide a follow-up advisory service to the producer.

136. The Review Group noted that the provisions in Part 7 of the *Pesticides Act 1978* only allow the confiscation and, by Ministerial Order, the possible destruction of plants or plant produce which exceed MRLs. It does not provide the power to prosecute people for having or selling plants or plant produce which exceed MRLs unless they do so in contravention of an order.

Competition Restrictions - Assessment

137. The *Pesticides Act 1978* contains provisions which allow for direct intervention to prevent foodstuffs containing unacceptable levels of chemical residues from progressing further along the food production chain.

138. The Review Group was of the opinion that there needs to be provision for the NSW Government to intervene to prevent livestock, plants and plant produce containing unacceptable levels of chemical residues from progressing further along the food production chain.

139. NSW Agriculture presently regulates chemical residues in livestock through its administration of the *Stock (Chemical Residues) Act 1975*. The Review Group concluded that the powers provided by Part 7 of the *Pesticides Act 1978* to regulate chemical residues in plants and plant produce(other than produce that is a result of a manufacturing process), would be more effectively administered if they were to be transferred into the same legislation regulating chemical residues in livestock, i.e., the *Stock (Chemical Residues(Act 1975*). The result would be a single piece of legislation regulating chemical residues in livestock, plants and plant produce.

140. The Review Group also concluded that to ensure consistency of regulation of chemical residues in livestock, plants and plant produce, the regulatory powers in relation to chemical residues in plants and plant produce (other than produce that is a result of a manufacturing process) should be extended to incorporate the following regulatory powers: the ability to

restrict or prohibit production on land to prevent plants and plant produce from becoming chemically affected; the ability to prohibit misrepresentations on sale of plants and plant produce after treatment with specified substances; and the ability to prohibit false or reckless statements in regard to the chemical residue status of plants and plant produce. It should be noted that there are equivalent provisions relating to livestock currently in the *Stock (Chemical Residues) Act 1975*.

Recommendation 22.
The Review Group recommends that the powers provided by Part 7 of the Pesticides Act 1978 to regulate chemical residues in plants and plant produce be transferred into the Stock (Chemical Residues) Act 1975. The result would be a single piece of legislation regulating chemical residues in livestock, plants and plant produce (other than produce that is a result of a manufacturing process).

Recommendation 23.
The Review Group recommends that within the amalgamated legislation, the regulatory powers in relation to chemical residues in plants and plant produce be extended to incorporate the following regulatory powers: the ability to restrict or prohibit production on land to prevent plants and plant produce from becoming chemically affected; the ability to prohibit misrepresentations on sale of plants and plant produce after treatment with specified substances; and the ability to prohibit false or reckless statements in regard to the chemical residue status of plants and plant produce. This would ensure consistency of regulation of chemical residues in livestock, plants and plant produce.

FUTURE STRUCTURE OF THE LEGISLATION

141. The *Fertilisers Act 1985*, the *Stock Foods Act 1940* and the *Stock Medicines Act 1989* provide a set of regulatory controls over the chemical inputs to livestock production. In the event, however, that stock become contaminated the *Stock Chemical Residues Act 1975* provides powers to stop contaminated stock from progressing further up the food chain. Part 7 of the *Pesticides Act 1978* similarly provides powers to regulate for chemical residues in plants.

142. The Review Group considered whether it would be appropriate to amalgamate any or all of the Acts under review. In assessing this issue, consideration was given to the objectives of the various Acts and the administrative efficiencies which may be achieved. The Review Group concluded that each of these acts have multiple objectives including human health, international trade, animal welfare and environmental protection and that the emphasis placed on each of these objectives varies depending on the nature and circumstances of the residue contamination.

143. The *Fertilisers Act 1985*, the *Stock Foods Act 1940* and the *Stock Medicines Act 1989*, all have similar objectives and each represents an attempt by the NSW Government to control the level of chemicals in inputs to the process of livestock production. It follows that amalgamation of these Acts would ensure greater consistency in how the NSW Government regulates chemical inputs to the production process. The Review Group therefore concluded that these pieces of legislation should be amalgamated.

144. Once contamination has been detected, the *Stock (Chemical Residues) Act 1975* and Part 7 of the *Pesticides Act 1978* can be used by the New South Wales Government to stop

contaminated product progressing further along the food chain. Such product may otherwise be directed to either the domestic or export markets. As stated in Chapter 7, the Review Group recommends that the powers provided by Part 7 of the *Pesticides Act 1978* to regulate chemical residues in plants and plant produce be transferred into the same legislation regulating chemical residues in livestock. The result would be a single piece of legislation regulating chemical residues in livestock, plants and plant produce. The EPA has indicated its approval to the recommendation and is willing to repeal Part 7 of the *Pesticides Act 1978*, once equivalent legislation has been introduced.

145. An issue, however, which may warrant consideration is whether the amalgamated *Stock (Chemical Residues) Act 1975* and Part 7 of the *Pesticides Act 1978* may be appropriately administered by the newly created Safe Food on the basis that food safety, as it relates to both domestic and export markets, would be the primary objective of the legislation. Having this legislation administered by Safe Food and being part of the proposed 'Meat Industry Food Safety Scheme' may facilitate greater consistency with respect to how food production processes are regulated in NSW and would provide consistency with respect to the level of industry funding for these activities.

146. A further option for consideration may be amalgamation of some or all of the legislation included in this review with NSW Agriculture's animal and plant health legislation. A primary rationale for this amalgam would be savings in administration costs.

Recommendation 24.
The Review Group recommends that the NSW Government consider whether the amalgamated Stock (Chemical Residues) Act 1975 and Part 7 of the Pesticides Act 1978 should be administered by Safe Food Production NSW in order to facilitate greater consistency in the regulation of food production processes in NSW.

Recommendation 25.
The Review Group recommends that the Fertilisers Act 1985,* the *Stock Foods Act 1940* and the *Stock Medicines Act 1989 be amalgamated. The Review Group recommends that any further amalgamation of the resulting legislation with either the amalgamated Stock (Chemical Residues) Act 1975 and Part 7 of the Pesticides Act 1978 or with any other legislation, be considered within the context of the forthcoming Competition Policy review of NSW Agriculture's animal and plant health legislation.

1. INTRODUCTION

COMPETITION PRINCIPLES AGREEMENT

1.1 The Competition Principles Agreement was endorsed by all members of the Council of Australian Governments (COAG) in April 1995. The Agreement commits the NSW Government, by the year 2000, to review legislation which restricts competition.

1.2 The Agreement requires that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition.

1.3 In endorsing the Agreement, governments agreed that:

- the objectives of legislation will be clarified;
- the nature of the restriction will be identified;
- the likely effects of the restriction on competition and the economy generally will be analysed;
- the costs and benefits of the restriction will be assessed and balanced;
- alternative means for achieving the same result would be considered;
- any new anti-competitive legislation must conform to the net public benefit principle; and
- retained anti-competitive legislation must be reviewed at least once every ten years to determine if it is still required.

1.4 In assessing the costs and benefits of particular legislation, COAG agreed that the following matters, where relevant, would be taken into account:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally, or of a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

1.4 As part of its commitments under the Competition Principles Agreement, the NSW Government has undertaken a concurrent review of the *Fertilisers Act 1985*, the *Stock (Chemical Residues) Act 1975*, the *Stock Foods Act 1940*, the *Stock Medicines Act 1989* and Part 7 of the *Pesticides Act 1978*. The Terms of Reference are in Appendix 1.

1.5 Consistent with the Competition Principles Agreement, the purpose of the review is to determine if each piece of legislation results in a net public benefit.

THE REVIEW FRAMEWORK & PROCESS

1.7 The Review Group was chaired by NSW Agriculture (Mr Geoff File, Executive Director, Regulatory) and consisted of representatives nominated by:

- National Meat Association - NSW Division (Mr Martin Iffland);
- NSW Farmers' Association (Mr Phillip Johnston);
- NSW Health (Mr Geoffrey Richards);
- Environment Protection Authority (Mr Mark Gorta);
- NSW Agriculture (Mr Scott Davenport); and
- The Cabinet Office (Mr David Bernauer).

1.8 Key functions of the Review Group were the preparation and distribution of an Issues Paper, consultation with stakeholders, consideration of submissions and preparation of the Final Report. The Review Group concentrated on clarifying the objectives of the legislation, identifying the key restrictions within the legislation and assessing the benefits and costs of each of them.

1.9 The Review Group called for public submissions and released the Issues Paper in April 1998. The closing date for submissions was 17 July 1998, however, late submissions were accepted. 14 submissions were received which are listed in Appendix 2.

1.10 Two Working Groups were also established during the review process to assist in the preparation of certain submissions to the Review Group. These consisted of representatives of the various sectors of the fertiliser industry and representatives of public interest, community and environmental groups.

1.11 In addition, the Review Group invited organisations whose members are directly affected by this legislation to meet with the Review Group and advise them on issues of concern. As a result, the Review Group met with the NSW Country Meatworks Association and the NSW Branch of the Limestone Association of Australia.

STRUCTURE OF THE REPORT

1.12 Chapter 2 contains a discussion of the rationales for government intervention in relation to chemical residue management. The Chapter is then divided into the *Fertilisers Act 1985*, the *Stock Foods Act 1940*, the *Stock Medicines Act 1989*, the *Stock (Chemical Residues) Act 1975* and Part 7 of the *Pesticides Act 1978*. For each Act, the major provisions and the stated objectives are detailed, which is then followed by a selection of comments from submissions on the perceived objectives of the legislation, as well as a discussion and the Review Group's assessment and recommendations.

1.13 Chapters 3-7 contain background information, discussion and comments from submissions on the major competition restrictions of each piece of legislation, and the Review Group's assessment and recommendations of these. Chapter 8 contains a discussion of the recommended future structure of the legislation.

NATIONAL COMPETITION POLICY REVIEW OF AGRICULTURAL AND VETERINARY CHEMICALS LEGISLATION

1.14 A review of Commonwealth, State and Territory Agricultural and Veterinary Chemicals Legislation was commissioned by the Victorian Minister for Agriculture and Resources on behalf of Commonwealth, State and Territory Ministers for Agriculture/Primary Industries.

1.15 The review included the Commonwealth's legislation to establish the National Registration Authority for Agricultural and Veterinary Chemicals and the complementary adoptive State and Territory legislation. The review also covered control of use legislation for agvet chemicals in Western Australia, Queensland, Victoria and Tasmania. A list of the legislation reviewed is in Appendix 3. It should be noted that the control of use legislation referred to above includes legislation regulating pesticides and stock medicines but does not include legislation regulating stock foods or fertilisers.

1.16 The review examined the case for reform of any legislative restrictions on competition contained in the legislation listed in Appendix 3, in accordance with the Victorian Government's Guidelines for the Review of Legislative Restrictions on Competition, including those provisions relating to national reviews.

1.17 The independent consultants (PriceWaterhouseCoopers) report was completed and presented to Standing Committee on Agriculture and Resource Management/Agricultural and Resource Management Council of Australia and New Zealand (SCARM/ARMCANZ) in January 1999. As part of the process agreed to by SCARM/ARMCANZ, this report was forwarded to a Signatories (to the National Registration Scheme for Agricultural and Veterinary Chemicals) Working Group to develop a draft inter-governmental response to the consultants' report for consideration. The report and response will then be considered by SCARM/ARMCANZ prior to final consideration by Council Of Australian Governments (COAG).

2. OBJECTIVES OF THE LEGISLATION

INTRODUCTION

2.1 To comply with the Competition Principles Agreement, the Review Group was required to identify the objectives of the *Fertilisers Act 1985*, the *Stock Foods Act 1940*, the *Stock Medicines Act 1989*, the *Stock (Chemical Residues) Act 1975* and Part 7 of the *Pesticides Act 1978* and consider whether the objectives of each can only be achieved by restricting competition.

2.2 As well as establishing the objectives of the five pieces of legislation the Review Group was required to assess whether there is a continuing need for those objectives to be met through government intervention. That is, the Review Group was required to establish any areas of 'market failure' (as defined on page iii) or other clearly defined public policy objectives which are being, or should be, addressed by these Acts or other legislation.

2.3 Under a market failure framework, government intervention is limited to addressing problems associated with clear and identifiable areas where freely operating markets fail to produce socially desirable outcomes. This process will determine which of the current objectives of the Act, if any, represent legitimate roles for government, and which others may be objectives of industry.

2.4 The Review Group recognised that market failure is a necessary, but not sufficient, condition for government intervention. The decision to intervene in the market should depend on the size and extent of the market failure and the likely outcomes. In relation to chemical residue management, reasons commonly given for government intervention include:

- food safety;
- market access;
- environmental protection;
- consumer protection; and
- animal welfare.

Food Safety

2.5 Most community concerns from chemical residues and contaminants relate to food purity and safety in terms of human health. It is generally assumed that the supply of agricultural products safe for human consumption would not occur at the level desired by the community if governments did not intervene in the market. This assumption is based on a perceived lack of market incentives for producers to invest in techniques and procedures which ensure that products are residue and contaminant free. Consequently, governments regulate the maximum allowed level of chemical residues and contaminants in agricultural products and impose controls on intermediate food products, such as livestock.

Market Access

2.6 It is generally argued that the occurrence of unacceptable chemical residues or contaminants in products sent to overseas markets may not only lead to rejection of that shipment, but may also 'spill-over' to affect market access for other shipments and/or prices for future consignments. Similarly, domestic consumers may lose confidence in products which are found to contain unacceptable levels of chemicals residues or contaminants.

2.7 A related issue is the level of complementarity between State and Commonwealth legislation. Given that the Commonwealth Government is responsible for export trade, arguably, State legislation should be of an enabling nature with respect to the international trade objectives of the Commonwealth Government.

Environmental Protection

2.8 There may be insufficient incentives or knowledge for producers to take into account the possible detrimental effects of farm chemicals on the environment. Chemicals may degrade soil, water and air resources which may subsequently impact on other resources valuable to society, such as biodiversity.

Consumer Protection

2.9 It is generally accepted that governments in market-based economies will enact laws and regulations to protect consumers from harmful products and unconscionable behaviour (eg. false representations). Cases may be made for government to improve information flows and to provide protection where consumers are unable to assess product and service integrity.

2.10 It is generally accepted that governments have a role to play in implementing systems that provide customers with minimum consumer protection standards, but that the private sector and markets are best placed to meet the vast array of consumer demands which constitute product or service quality.

2.11 The extent to which governments need to be involved in regulating the 'quality' attributes of products and services is an issue which has been the subject of considerable debate as part of the process of micro economic reform. Increasingly, governments are restricting the direct regulation of product quality to those instances where variation in a product attribute may result in significant social costs. This is particularly the case where such variation may impact on human health or the environment. Otherwise, the market is left to penalise or reward aspects of product quality.

2.12 Where the costs of quality variation or misrepresentation are in the form of private financial losses, governments have in place 'fair trading' and consumer protection legislation, such as the Commonwealth *Trade Practices Act 1974* and the NSW *Fair Trading Act 1987*, to provide recourse.

Animal Welfare

2.13 The rationale for Government regulation of animal welfare is that freely operating markets may fail to provide a socially desirable level of animal welfare, and that, intervention to ensure minimum standards of animal welfare could be expected to produce public benefits.

2.14 The NSW Government has intervened through a number of pieces of legislation to seek to ensure desirable levels of animal welfare. The main animal welfare legislation forms in NSW is the *Prevention of Cruelty to Animals Act 1989.* Other legislation includes the *Animal Research Act 1985* and the *Veterinary Surgeons Act 1986*.

2.15 The *Prevention of Cruelty to Animals Act 1979* defines standards of animal welfare and action to be taken in the event of breaches. The objectives of the Act are stated as:

(a) to prevent cruelty to animals; and
(b) to promote the welfare of animals by requiring a person in charge of an animal:
  (i) to provide care for the animal; and
  (ii) to treat the animal in a human manner; and
  (iii) to ensure the welfare of the animal.

2.16 Animal welfare is relevant to chemical residue management because of the possibility of animals suffering ill health because of chemical residues or contaminants.

2.17 The following sections detail the major provisions and stated objectives of each of the five pieces of legislation under review. A selection of comments from submissions on the perceived objectives of the legislation, as well as a discussion and the Review Group's conclusions and recommendations then follow.

THE FERTILISERS ACT 1985

Provisions of the Act

2.18 The sale of fertilisers in NSW is controlled by the *Fertilisers Act 1985,* which commenced on 1 July 1985. This Act repealed the *Fertilisers Act 1934* which was considered out of date. Although the basic provisions of the 1934 Act were continued, a number of improvements to and extensions of the provisions were incorporated in the current Act.

2.19 The legislation makes the following definitions:

- a *soil improving agent* as a fertiliser or a liming material;
- a *fertiliser* as a substance that consists of or contains nitrogen, phosphorus or potassium, or any compound thereof, and is manufactured, represented, sold or used as a means for directly or indirectly supplying nutriment for the purpose of enhancing the development, productivity, quality or reproductive capacity of vegetation, but does not include farm-yard manure or stable manure, crude night-soil, crude offal, compost, seaweed or unmanufactured refuse;
- a *liming material* as a substance that consists of or contains dolomite, gypsum, lime or magnesite; and is manufactured, represented, sold or used as a means for directly or

indirectly affecting the nature or composition of soil or any other matter in which vegetation is grown;

- *lime* as an oxide, hydroxide or carbonate compound of calcium;
- *magnesite* as an oxide, hydroxide or carbonate compound of magnesium; and
- a *trace element* as boron, cobalt, copper, iron, magnesium, manganese, molybdenum, selenium or zinc; and
- a *trace element product* as a substance that consists of or contains a trace element, or any compound thereof; and is manufactured, represented, sold or used as a means for directly or indirectly (i) supplying nutriment for the purpose of enhancing the development, productivity, quality or reproductive capacity of vegetation; or (ii) affecting the nature or composition of soil or any other matter in which vegetation is grown, but does not include a soil improving agent.

2.2 The *Fertilisers Act 1985* provides for the registration of brand names for soil improving agents and regulates the sale of soil improving agents and trace element products. The legislation sets minimum content standards and maximum allowable concentrations of heavy metals. Labelling requirements are also contained in the legislation as a means of informing users of soil improving and trace element products of the content and chemical composition of the particular product. The legislation contains provisions concerning false representations by suppliers, and provides various powers of inspection and enforcement.

2.3 On 17 March 1992 the *Fertilisers (Amendment) Act 1992* was assented to. The primary purpose of this Act was to make provision in the principal Act for the regulation of the sale and supply of sewerage sludge as a fertiliser in its own right and as an ingredient in other fertilisers. The *Fertilisers (Amendment) Act 1992* also included amendments relating to penalties and other miscellaneous matters.

2.4 On 1 September 1997 those parts of the *Fertilisers (Amendment) Act 1992* not related to sewerage sludge were proclaimed to commence and at the same time the *Fertilisers Regulation 1997* commenced.

2.5 The *Fertilisers Regulation 1997* includes provision for the establishment of maximum allowable concentrations in soil improving agents of heavy metals, such as cadmium, mercury and lead.

Objectives

2.24 The Review Group clarified the objectives of the Act by reference to the preamble to the *Fertilisers Act 1985* which states that it is:

"An Act to provide for the registration of brand names for soil improving agents; to regulate the sale or supply of soil improving agents, liming materials and trace element products; and for related purposes."

2.25 The legislation does not specifically state why the registration of brand names for soil improving agents and the regulation of the sale or supply of soil improving agents and trace element products are desired. The second reading speech for the 1985 bill also sheds no light on the intended outcomes of the Act.

2.26 It appears to the Review Group, however, that the primary intent of the 1934 and 1985 Acts was to protect consumers by ensuring that soil improving agents with little or no fertilising value were prevented from being sold, i.e., ensuring product quality. Thus, the legislation was primarily directed at setting minimum quality standards for fertilisers, liming materials and trace element products.

2.27 With the commencement of the *Fertiliser Regulation 1997*, the objectives of the legislation appear to have been extended to include food safety. The Regulatory Impact Statement for the *Fertilisers Regulation 1997*, stated in relation to providing for maximum allowable concentrations in soil improving agents of heavy metals, that this was "*to ensure that unsafe levels of heavy metals do not transfer to the human food chain by their excessive presence in soil improving agents*."

Submissions

2.28 In its submission to the review, the Fertiliser Industry Federation of Australia stated: "*The current Fertiliser Act serves a number of important purposes, which FIFA believes, need to be retained in some form, for the protection of users, the broader public interest and international trade considerations*."

2.29 NSW Farmer's Association stated: "*The major objectives directly relating to a Fertilisers Act is to sufficiently provide the user with the knowledge of the contents, conditions to prevent misuse, and controls or measures to ensure health standards are maintained for both user and the environment as a result of the application process."*

2.30 Mark Conyers, a Senior Research Scientist, Soil Chemist, NSW Agriculture stated: "*I propose new objectives for the management of 'soil improving agents'. These objectives could reside under either a revised Fertiliser Act or an Agricultural Products Act.*

"*Suggested objectives of the legislation:*

(1) to ensure that the market is well informed for making decisions involving the application of soil improving agents;

(2) to minimise any negative environmental impact of soil improving agents,

i) off site, and

ii) on end-product integrity."

Discussion

2.31 The Review Group observed that the majority of the provisions in the *Fertilisers Act 1985* relate to quality assurance. These provisions include; registration of brand names, labelling and composition requirements, and the prohibiting of false representations.

2.32 Provisions in the legislation which set maximum permitted concentrations of heavy metals appear to be directed at food safety and market access objectives. These provisions aim to ensure that contaminants which are capable of being transferred to the human food chain by their presence in fertilisers are either eliminated or reduced to levels which are not dangerous to human health and which comply with overseas market access requirements.

2.33 By setting maximum allowable concentrations of heavy metals in fertilisers, it could also be argued that the legislation assists environmental protection by preventing the accumulation of heavy metals in the soil. In this regard, however, the effectiveness of the legislation could be questioned on the basis that it only sets maximum allowable concentrations of cadmium, lead and mercury in specific fertilisers and trace elements, rather than in all soil improving agents.

2.34 Labelling provisions which require manufacturers to state the nutrient content of the product, i.e., nitrogen, phosphorus or potassium in fertilisers and calcium, magnesium or sulphur in liming materials, may also assist environmental protection by consumers being aware of the nutrient content of fertilisers and the possible flow-on effects to the environment.

2.35 The legislation also provides for warning labels to be attached to parcels of certain soil improving agents specified in the regulations. These warning statements relate to the occupational health and safety of those persons applying these products, as well as to the health of livestock, plants and the environment.

Conclusions

2.36 The Review Group identified the original objectives of the Act as being those identified in paragraph 2.24 and agreed that they relate more to matters of process than to particular outcomes. These objectives fail to provide clarification of the forms of market failure which the Act is intended to address or the broader public benefit outcomes sought by the NSW Government. The Review Group therefore concluded that to make the stated objectives of the Act consistent with Competition Policy principles they need to be modified.

2.37 The Review Group recognised that consistent with National Competition Policy and contemporary NSW Government regulatory policy, any legislative intervention in the NSW fertilisers industry should be required to generate public benefits rather than solely focussing on industry benefits.

2.38 The Review Group concluded that there is a strong case to redefine the objectives of the Act to make them less 'process' and more 'outcome' orientated, by focusing them on addressing identified market failures. The specific outcomes found to be appropriate are identified in Chapter 3.

THE STOCK FOODS ACT 1940

Provisions of the Act

2.39 The legislation defines a 'stock food' as a basic food or food mixture which contains one or more nutritional ingredients and is intended to be fed to animals for the maintenance of life, normal growth, production, work, reproduction or performance. It also includes any block, lick, premix, stock food supplement, but does not include any stock medicine and does not include any substance that, in a particular sale, is not represented as being suitable for use as stock food. 'Stock' is defined as animals (other than a human being) belonging to a food producing species.

2.40 The legislation contains provisions which:

- set limits for foreign ingredients (prohibited substances; certain weed seeds and plants; toxic compounds; antioxidants, minerals and urea; and chemical residues);
- require the identification of added salt and urea; and
- require labelling to indicate the particular class of stock, and the age or stage of production of such stock, which the product will maintain or for which it will promote the growth or productive capacity;
- require labelling to indicate that the product does or does not contain ruminant material, or alternatively, to indicate the specific species of stock which the product should be fed to; and
- require an information statement with bulk sales.

2.20 Foreign ingredients and the maximum allowable proportion or amount, or in the case of residues, MRLs, are contained in Schedule 1 of the *Stock Foods Regulation 1997* and Column 1 of Table 4 in the NRA document *MRL Standard: Maximum Residue Limits in Food and Animal Feedstuffs*, together with such amendments made to this document as are published in the *Commonwealth Gazette*.

Objectives

2.42 The Review Group clarified the objectives of the Act by reference to the preamble to the *Stock Foods Act 1940* which states that it is:

"An Act to regulate the sale of food for stock and for other purposes."

2.43 Prior to 1989, stock medicines and foods were regulated by one piece of legislation, the *Stock Foods & Medicines Act 1940*. The object of the *Stock Foods & Medicines (Amendment) Act 1989* was to repeal provisions of the *Stock Foods & Medicines Act 1940* relating to stock medicines as a consequence of the proposed enactment of the *Stock Medicines Act 1989*; to increase penalties for certain offences relating to stock foods in the *Stock Foods & Medicines Act 1989*; and to confer additional powers on inspectors under that Act.

2.44 In 1996, a number of amendments were made to the *Stock Foods Act 1940*, including the removal of the compulsory registration of stock foods. The Hansard record of the second reading speech for the *Stock Foods Amendment Bill 1996* states:

"*This bill is being presented to provide for changes which are in keeping with the Government's commitment to reducing unnecessary regulation while at the same time ensuring that essential protections are in place for purchasers and users of stock foods. The proposed changes are in line with those to be introduced by other States as part of an agreement to produce uniform controls over stock foods in Australia*."

2.45 The main objective of the legislation is not apparent from the second reading speech. The intention, however, appears to be to avoid contaminants in stock foods which may subsequently cause contamination of meat products or have detrimental effects on animal welfare.

Submissions

2.46 In its submission to the review, the Veterinary Manufacturers and Distributors Association stated: "*..the main objectives of the legislation are: controlling the level of foreign ingredients occurring in stock feeds; and ensuring that animal owners are aware of the contents, intended species and purpose of stock food.*

"*It is submitted that the objectives of the* [Stock Foods] *Act are already contained in the other Acts. Registration, including labelling is conducted by NRA and inspections of any chemically affected stock can be instituted under the Stock (Chemical Residues) Act.*"

2.47 NSW Farmers' Association stated: "*The objectives of the Stock Foods Act 1940 are clearly outlined in the Issues Paper. The Act comprehensively addresses the undesirable contamination of human food through stock food inputs by controlling and monitoring the level of foreign ingredients and by ensuring that owners of stock are aware of the contents, intended species and the purpose of stock food."*

2.48 The Stock Feed Manufacturers' Association of Australia stated: "*The main objectives of the legislation* [*Stock Foods Act 1940*] *identified in the Issues Paper, viz '..to protect human health and the health of animals' are both appropriate and facilitated by the legislation*."

Discussion

2.49 The Review Group observed that the majority of the provisions in the *Stock Foods Act 1940* relate to food safety and animal welfare. These provisions include: limits on foreign ingredients in stock foods (includes a list of substances banned outright as ingredients in stock foods); labelling of packages containing stock foods as well as requiring suppliers of bulk stock foods to provide customers with an information statement (same information as contained on labels of packages of stock foods).

2.50 The Review Group also identified market access for livestock and livestock products as an objective of the provisions which set limits on residues in stock foods. Stock which consume products which are subject to this legislation have a reduced risk of containing residues in excess of the MRL's when slaughtered.

Conclusions

2.51 The Review Group identified the original objectives of the Act as being those identified in paragraph 2.42 and agreed that they relate more to matters of process than to particular outcomes. These objectives fail to provide clarification of the forms of market failure which the Act is intended to address or the broader public benefit outcomes sought by the NSW Government. The Review Group therefore concluded that to make the stated objectives of the Act consistent with Competition Policy principles they need to be modified.

2.52 The Review Group recognised that consistent with National Competition Policy and contemporary NSW Government regulatory policy, any legislative intervention in the NSW stock foods industry should be required to generate public rather than simply industry benefits.

2.53 The Review Group concluded therefore that there is a strong case to redefine the objectives of the Act to make them less 'process' and more 'outcome' orientated, by focusing them on addressing identified market failures. The specific outcomes found to be appropriate are identified in Chapter 4.

THE STOCK MEDICINES ACT 1989

Provisions of the Act

2.54 The introduction of the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994* made provision for the national registration scheme - the *Agricultural and Veterinary Chemicals Code* (*Agvet Code*) to apply in NSW. As a result, a number of provisions of the *Stock Medicines Act 1989* relating to registration and labelling requirements were suspended.

2.55 The *Agvet Code* makes provision for the evaluation, approval, and control of the supply, of active constituents for proposed or existing agricultural and veterinary (agvet) chemical products, and the evaluation, registration, and control of the manufacture and supply, of such products. The Code also details requirements for product labels, which includes instructions on the appropriate use, handling and disposal of the products.

2.56 The *Agvet Code* is detailed in the Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* and the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) which administers the Code is established by the Commonwealth *Agricultural and Veterinary Chemicals (Administration) Act 1992*

2.57 The *Stock Medicines Act 1989* currently regulates the 'use' functions of stock medicines. For the purposes of this legislation, 'stock medicine' has the same meaning as a veterinary chemical product in the *Agvet Code*, but excludes a veterinary chemical product that is represented as being suitable for, or is manufactured, supplied or used for, the external control of ectoparasites of stock. The *Pesticides Act 1978*, which is administered by the Environment Protection Authority, covers all other agricultural and veterinary chemical products defined in the *Agvet Code*.

2.58 The major provisions in the legislation provide powers to:

- prohibit possession of certain stock medicines;
- control the use of registered and unregistered stock medicines on animals;
- control the prescription or supply of stock medicines by veterinary surgeons;
- restrict the advertising of certain stock medicines;
- require buyers of treated stock to be notified of unexpired withholding periods; and
- require sellers of stock food treated with a stock medicine to inform buyers that the food has been so treated, and to provide buyers with certain written details including the relevant withholding period.

2.27 Compliance with a withholding period requires that until the relevant period has expired, a person must not harvest the products of the treated stock, or slaughter the stock, for human consumption. Withholding periods are established to provide ample time for the natural

purging, to a level within Australian domestic MRL standards, of any chemical residues in the meat or other products of stock consequent to medical treatment.

Objectives

2.60 The Review Group clarified the objectives of the Act by reference to the preamble to the *Stock Medicines Act 1989* which states that it is:

"An Act relating to medicines for stock and other animals for the purposes of enhancing the quality of agricultural production, protecting the environment and safeguarding the health of stock and other animals; and for other purposes."

2.61 From this preamble it appears that the principal objectives of the *Stock Medicines Act 1989* are to protect human and animal health, the environment and trade in animal products, by requiring the proper and appropriate use of stock medicines.

2.62 The Hansard record of the second reading speech for the *Stock Medicines Bill 1989* states:

"*The object of the Stock Medicines Bill is to replace the provisions in the Stock Foods & Medicines Act 1940 relating to stock medicines with updated legislation. This updated legislation deals exclusively with stock medicines and gives effect in New South Wales to a national scheme for clearance of stock medicines for use in participating states and territories*".

Submissions

2.63 In its submission to the review, the Veterinary Manufacturers and Distributors Association stated: "*The principal objectives of the Stock Medicines Act, 1989 as stated in the Review, 'appear to be to protect animal health and welfare, human health, the environment and trade in animal products by requiring the proper and appropriate use of stock medicines'.*"

2.64 The Australian Veterinary Association - NSW Division stated: "*The objectives of the Stock Medicines Act are broadly defined in the 'issues paper'. On balance the objectives are being successfully met by the present legislation. The Australian Veterinary Association has identified the following potential market failures that the Act must continue to address…food safety, animal welfare and informed consent, integrated case management and reduced reliance on stock medicines, control over restricted substances, and availability of effective drugs."*

2.65 NSW Farmers' Association stated: "*The objectives of the Stock Medicines Act 1989 together with the 1995 amendments ensure the safe and responsible distribution and use of stock medicines and provides legal recourse for affected parties. The Act aims to enhance the quality of agricultural production, whilst protecting the environment and safeguarding the health of stock and other animals. The Act also provides a "public good" in that it ensures an end product that is free of residues from stock medicine.*"

2.66 The Stock Feed Manufacturers' Association of Australia stated: "*…the objectives of the current* [Stock Medicines] *Act are appropriate and are largely met by the operation of the Act."*

Discussion

2.67 The Review Group observed that the majority of the provisions in the *Stock Medicines Act 1989* relate to food safety, animal welfare and market access.

2.68 The Review Group was of the opinion that protecting the environment (as stated in the preamble to the Act) is no longer a relevant objective for the Act. Registration of stock medicines is currently carried out by the National Registration Authority for Agricultural and Veterinary Chemicals and the registration process requires account to be taken of environmental impacts. The only provision in the Act which appears to relate to this objective is section 46, which allows the Director-General to make an order if he believes on reasonable grounds that the administration or application of a stock medicine is likely to cause undue hazard to the environment.

Conclusions

2.69 The Review Group identified the original objectives of the Act as being those identified in paragraph 2.60. Though these appear to be the intended outcomes of the legislation, the Review Group agreed that there was a difference between these outcomes and the apparent purposes of the provisions in the Act. The Review Group therefore found that to make the stated objectives of the Act consistent with Competition Policy principles they need to be modified.

2.70 The Review Group concluded therefore that there is a strong case to redefine the objectives of the Act by focussing them on addressing identified market failures. The specific outcomes found to be appropriate are identified in Chapter 5.

THE STOCK (CHEMICAL RESIDUES) ACT 1975

Provisions of the Act

2.71 The *Fertilisers Act 1985*, the *Stock Foods Act 1940* and the *Stock Medicines Act 1989* provide a set of regulatory controls over the chemical inputs to agriculture. In the event of stock becoming contaminated, however, the *Stock (Chemical Residues) Act 1975* provides for government intervention to stop contaminated stock from progressing further up the food chain.

2.72 The *Stock (Chemical Residues) Act 1975* enables the Minister to declare by order that stock (bulls, oxen, steers, cows, heifers, calves, rams, ewes, wethers, lambs, goats, kids and swine; and other animals or birds of a kind used for human food that the Minister declares, by order, to be stock for the purposes of this Act) containing more than a specified concentration of a specified residue, or that have been treated with or exposed to a specified stock medicine or other specified substance, are chemically affected. The Minister is not to make such an order

unless of the opinion that stock to which the order relates are, or are likely to become, degraded on account of the relevant residue, treatment or exposure.

2.73 For the purposes of these provisions, stock are degraded if they:

- are unfit for sale or export for human consumption; or
- pose a danger to human or animal health or to the environment; or
- are detrimental to export or other trade.

2.12 The major provisions of the legislation provide powers to:

- obtain entry to land, examine records, ask questions and test stock, fodder, soil, etc.;
- detain and seize stock known or suspected of being chemically affected;
- regulate the movement of stock known or suspected of being chemically affected;
- order the destruction or disposal of chemically affected stock considered unsalvageable;
- order the destruction or disposal of fodder which, if used, would cause stock to become chemically affected;
- restrict or prohibit grazing on land to prevent stock from becoming chemically affected;
- prohibit misrepresentations on sale of stock after treatment with specified substances;
- prohibit false or reckless statements in regard to the chemical residue status of stock;
- enable NSW Agriculture to disclose information relating to residues in stock and on land where that information is disclosed in good faith.

2.12 Specified residues and their maximum concentrations (MRLs - maximum residue limits) are contained in the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) document *MRL Standard: Maximum Residue Limits in Food and Animal Feedstuffs* (1996).

2.13 For the purposes of the *Stock (Chemical Residues) Act 1975*, a 'residue' means:

(a) a substance remaining in the body tissues or secretions of stock resulting from the use of or contact with any pesticide, drug or other chemical, whether of the same or of a different kind or nature; or
(b) a natural secretion which is present in the body tissues of stock in an abnormal concentration.

Objectives

2.77 The Review Group clarified the objectives of the Act by reference to the preamble to the *Stock (Chemical Residues) Act 1975* which states that it is:

"An Act to prevent the slaughter for human consumption of stock which contain certain concentrations of residues of chemicals or which are otherwise chemically affected; to prevent stock from becoming chemically affected; and for purposes connected therewith."

2.78 The Hansard record of the second reading speech of the *Stock (Chemical Residues) Bill 1975* states:

"*the bill is a new measure to protect human health. Its subject-matter, however, is not the food we eat but the livestock that may be slaughtered and turned into meat for human consumption*."

2.79 From this it appears that the principal aim of the legislation is the protection of human health by intervening early in the meat production system in an effort to ensure that meat and meat products supplied to consumers are safe (at least in the context of chemical residues).

2.80 Recent amendments in 1996 appear to have extended the objectives of the legislation to include market access, environmental protection and animal welfare. The second reading speech of the *Stock (Chemical Residues) Amendment Bill 1995* states "*this bill extends the existing legislative mechanism in the Stock Chemical Residues Act for regulation of stock to comply with the requirements of our international trading partners, consumers and the environment.*"

2.81 Animal welfare is not mentioned in this extract, but as detailed in paragraph 2.73 above, the amendments enable stock to be declared as degraded if they pose a danger to animal health.

Submissions

2.82 In its submission to the review, NSW Treasury stated: "*The objectives of the chemical residue legislation seem to revolve around health and environmental aspects. Product quality may have been an objective in the past, but Treasury would argue that there are sufficient commercial incentives for industry to be responsible self-regulators in respect to product quality composition standards. Treasury would support a shift to a more outcome-based means of regulation. This outcome-based regulation should continue to focus on health and environmental aspects of chemical residues. However, attempts should be made to foster a more efficient compliance mechanism, using market based approaches where appropriate*."

2.83 NSW Farmers' Association stated: "*They* [the objectives of the *Stock (Chemical Residues) Act 1975*] *detail the intent to ensure the integrity of livestock products sold for human consumption, by providing governments with enforcement provisions in relation to unacceptable chemical residues in livestock products*.

"*Events in recent years have amply demonstrated the significant risk faced by the livestock industry of trade disruptions and a loss of consumer confidence as a result of an unacceptable residue detection in livestock products.*

"*Governments require the power to act quickly in such situations, to ensure that long-term damage to markets is minimised*."

Discussion

2.84 The Review Group observed that the majority of the provisions in the *Stock (Chemical Residues) Act 1975* relate to food safety and market access.

2.85 Although the 1996 amendments to the Act broadened the application of the Act to encompass animal welfare and prevention of undesirable environmental outcomes, the Review Group were of the opinion that there is little scope or likelihood of the Act effectively addressing these issues.

Conclusions

2.86 The Review Group identified the objectives of the Act as being those identified in paragraph 2.77 and agreed that they relate more to matters of process rather than to particular outcomes. These objectives fail to provide clarification of the forms of market failure which the Act is intended to address or the broader public benefit outcomes sought by the NSW Government. The Review Group therefore concluded that to make the stated objectives of the Act consistent with Competition Policy principles they need to be modified.

2.87 The Review Group concluded that there is a strong case to redefine the objectives of the Act to make them less 'process' and more 'outcome' orientated, by focusing them on addressing identified market failures. The specific outcomes found to be appropriate are identified in Chapter 6.

PART 7 OF THE *PESTICIDES ACT 1978*

Provisions of Part 7

2.88 In NSW, while regulation of the use of stock medicines, fertilisers and stock foods remains primarily within the jurisdiction of NSW Agriculture, the lead agency for chemical products policy and regulation generally, including farm pesticides, is the NSW Environment Protection Authority (EPA). The *Pesticides Act 1978* is administered by the EPA.

2.89 The *Pesticides Act 1978* regulates the use of pesticides, and requires users of registered pesticides to read and comply with label instructions (label instructions are approved by the NRA as part of the registration process). The provisions in Part 7 allow for the prevention of certain foodstuffs containing prohibited residues from becoming available for human consumption.

2.90 Similar to the earlier definition of 'stock medicine', 'pesticide' has the same meaning as a agricultural chemical product in the *Agvet Code* and includes a veterinary chemical product which is represented as being suitable for, or is manufactured, supplied or used for the external control of ectoparasites of animals.

2.91 A prescribed foodstuff subject to Part 7 is any vegetation from which produce of a kind referred to in Column 1 of Schedule 1 to General Standard A14 of the *Food Standards Code* is obtained; or any produce of a kind so referred to (other than produce that is the result of a manufacturing process); or prescribed produce of any living animal of a prescribed class of animals; that is, or may become, capable of being used as food for any form of life.

2.92 Some of the produce listed in Column 1 of Schedule 1 to General Standard A14 of the *Food Standards Code* include apples, pears, bananas, strawberries, potatoes, peanuts, pulses, lettuce, cereal grains and citrus fruits.

2.93 A foodstuff contains a prohibited residue when a concentration of a substance referred to in Column 1 of Schedule 1 to General Standard A14 of the *Food Standards Code* is in excess of the set MRL, or when a detectable concentration is present of a substance for which a maximum permissible concentration has not been specified.

Objectives

2.94 The Review Group clarified the objectives of Part 7 of the Act by reference to the preamble to the *Pesticides Act 1978* which states that it is:

"An Act to control the use and possession of pesticides, to control the application of pesticides and fertilisers from aircraft, and to provide for the prevention of certain foodstuffs containing prohibited residues from becoming available for consumption."

2.95 It appears that the last phrase of this preamble, i.e., "*to provide for the prevention of certain foodstuffs containing prohibited residues from becoming available for consumption"*, is most applicable to Part 7 of the *Pesticides Act 1978*.

Submissions

2.96 In its submission to the review, NSW Farmer's Association stated: "*Part 7 of the Pesticides Act appears to target the market failure associated with consumers being unable to detect harmful residues in foodstuff, and provides the Minister with powers to impound or destroy that foodstuff.*"

Discussion

2.97 The Review Group agreed that all of the provisions in Part 7 of the *Pesticides Act 1978* relate to food safety and market access.

Conclusions

2.98 The Review Group identified the objective of Part 7 of the *Pesticides Act 1978* as being that identified in paragraph 2.94. Though this appears to be the intended outcome of Part 7, the stated objective fails to clarify the market failure which Part 7 is intended to address.

2.99 The Review Group therefore concluded that to make the stated objective of Part 7 consistent with Competition Policy principles it needs to be modified to focus on addressing identified market failures. The specific outcomes found to be appropriate are identified in Chapter 7.

ADDITIONAL SUBMISSIONS

2.100 In addition to the comments selected from submissions on the objectives of each of the specific pieces of legislation, there was also a broad comment in one of the submissions relating to the overall objectives of all five pieces of legislation. The Consumer, Community and Environmental Working Party stated:

"Disturbingly, none of the statutes under review contain an express 'objects clause' and one is generally left to surmise what Parliament intended in promulgating the legislation. It is true that all the pieces of legislation contain more or less illuminating preambles. However, a preamble does not act as a legislative direction to government bodies in implementing the law, nor does it provide assistance in statutory construction unless a compelling reason can be demonstrated why recourse should be had to the preamble.

"It is the opinion of the Working Party that the absence of an objects clause in the legislation under review must be remedied. The importance of an explicit objects clause in setting environmental policy direction is well recognised. Objects provide a focus for government bodies implementing the legislation and for Courts interpreting the laws. They also help the community assess how effectively laws are being implemented.

"At a minimum, the Working Party is of the view, that all five statutes under review should be amended to include the following language:

The objects of this Act are as follows:

(1) to reduce and eliminate risks to human health and prevent the degradation of the environment caused by the use of [insert as appropriate: fertilisers, chemical residues, stock medicines, or pesticides];

(2) to reduce to harmless levels the discharge into the air, water or land of [insert as appropriate: fertilisers, chemical residues, stock medicines, or pesticides] likely to cause harm to human health and safety or to the environment;

(3) to promote the reduction and elimination of the use of [insert as appropriate: fertilisers, chemical residues, stock medicines, or pesticides] likely to cause harm to human health and safety or to the environment;

(4) to promote community involvement in decisions about [insert as appropriate: fertilisers, chemical residues, stock medicines, or pesticides];

(5) to ensure the community has easy access to relevant information about [insert as appropriate: fertilisers, chemical residues, stock medicines, or pesticides];

(6) to allocate the costs of the protection of human safety and the environment equitably and in a manner that encourages responsible use of [insert as appropriate: fertilisers, chemical residues, stock medicines, or pesticides] and reduces harm to the environment; and

(7) to assist in the achievement of ecologically sustainable development. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle - namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty is not a reason for postponing measures to prevent environmental harm;

(b) inter-generational equity - namely that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations. The principle of inter-generational equity requires that intra-generational equity also be observed;

(c) conservation of biological diversity and ecological integrity as a fundamental and primary consideration;

(d) improved valuation and pricing of environmental resources, including but not limited to:

(i) the inclusion of environmental factors in the valuation of assets and services - namely the pricing of goods and services to be based upon a full life cycle assessment of the costs of providing those goods and services, including assessment of the cost of natural and environmental resources utilised or degraded, and the costs of the ultimate disposal of any waste which may be generated;

(ii) implementation of the polluter pays principle - namely producers of pollution and waste to bear the cost of avoidance, abatement, recycling, remediation or containment; and

(iii) the pursuit of environmental goals by establishing incentive structures, including market mechanisms which enable those best placed to maximise benefits and/or minimise costs to develop their own solutions and responses to environmental problems.

(e) recognition that the environmental impacts of actions and policies occur at local, regional and global levels; and

(f) community participation - namely that decision making processes and the formulation of policies, programs and management plans necessarily involve the participation of members of the community, through:

(i) transparency of administrative process and the provision of access to complete information to the fullest extent possible;

(ii) public notification of decision making processes and the formulation of policies, programs and management plans; and

(iii) full consultation and consideration of community input."

RECOMMENDATION

2.101 ***Recommendation 1.***
In the event that the Acts under review continue, or alternative legislative arrangements are introduced, the Review Group recommends that the objectives of these five Acts be redefined to make it clear what forms of market failure they are intended to address, and what outcomes the NSW Government seeks to achieve.

3. COMPETITION RESTRICTIONS OF THE FERTILISERS ACT 1985

INTRODUCTION

3.1 The Review Group was required to identify any restrictions on competition in the five pieces of legislation being jointly reviewed, analyse their likely effect on the economy generally and weigh the costs and benefits of the restrictions. The guiding principle of the review was that the legislation should not restrict competition unless it could be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs; and
(b) the objectives of the legislation could only be achieved by restricting competition.

3.2 In addition to assessing whether the restrictive provisions within the legislation generate net public benefits, the Review Group was also required to assess whether they do so in a manner which least restricts competition.

3.3 Where the criteria at (a) and (b) are met, competition restrictions in legislation may be retained. However, to be consistent with Competition Policy principles, where competition restricting provisions of the Act are identified and it is determined either that the provisions do not yield a net public benefit or that the same objective could be achieved without restricting (or by a lesser restriction on) competition, then it is necessary to recommend repeal of those provisions.

3.4 The phrase 'restricting competition' can mean obvious and major restrictions, such as restricting entry to an industry, setting prices or banning certain commercial behaviour. However, it may also include restrictions where the effects are more subtle. The definition applied by the Review Group was that a restriction on competition occurs when the behaviour of individuals or firms is changed from that which would otherwise occur in the absence of regulation.

3.5 Restrictions on competition in the form of legislative controls imposed by government can have positive outcomes for the community where they effectively address forms of market failure. Alternatively, they can generate public costs where they are ineffective in addressing these problems, where they duplicate other legislation aimed at addressing the problem, or where they do not address any market failure at all.

3.6 The Review Group recognised that legislative provisions which restrict competition may be entirely appropriate and justified to meet public policy objectives. That is, the Review Group did not approach the review with a preconception that legislative provisions which restrict competition are necessarily bad or in some way fundamentally flawed. The review process was expressly intended to identify whether the provisions of the various pieces of legislation can be justified on the grounds that they deliver net public benefits.

3.7 This Chapter and Chapters 4-7 contain discussion of the identified restrictions on competition arising from provisions of the five Acts under review.

BACKGROUND

3.8 Applying the definition that a restriction on competition occurs when the behaviour of individuals or firms is changed from that which would otherwise occur, the Review Group made an assessment that the major provisions of the *Fertilisers Act 1985*, namely:

- registration of brand names for soil improving agents;
- conformation with registered particulars and composition standards; and
- labelling requirements,

may all restrict competition in some way.

Registration of brand names for soil improving agents

3.9 The sale of soil improving agents is regulated through the registration of brand names. It is an offence for a dealer to sell a soil improving agent other than under a registered brand name or in accordance with the consent of the Director-General of NSW Agriculture.

3.10 This provision does not apply to the sale of a soil improving agent to a manufacturer of soil improving agents, or to a purchaser to whose prescription the soil improving agent is formulated.

3.11 A dealer is defined in the Act as a person who carries on the business of importing, manufacturing, selling or otherwise dealing in soil improving agents or trace element products, whether or not the person carries on any other business.

3.12 Registration provides the mechanism whereby all products claimed to have soil improving value can be screened for content, i.e., compliance with composition standards, labelling and manufacturer's claims, before being allowed to be sold as soil improving agents. The Director-General may refuse to register a brand name if the substance fails to meet the prescribed composition standards. The Director-General may also refuse to register a brand name if the brand name is identical, or substantially identical, to some other registered brand name or the brand name sufficiently resembles another registered brand name, as to be likely to deceive.

3.13 Registration is for a period of three years and the current fee for registration is $250.

3.14 Each year a list of registered brand names is required to be published in the NSW Government Gazette containing the registered particulars for each brand name.

3.15 A dealer may not sell a soil improving agent under a registered brand name unless the soil improving agent conforms to the registered particulars in respect of the brand name.

Conformation with Registered Particulars and Composition Standards

3.16 The Act has a number of requirements in regard to conformation with registered particulars and composition standards. A dealer may not sell a soil improving agent under a registered brand name unless the soil improving agent conforms to the registered particulars in respect of

the brand name and the prescribed composition standards. The prescribed composition standards for soil improving agents are contained in Schedule 1 of the *Fertilisers Regulation 1997* and include maximum permissible concentrations of certain heavy metals for specific fertilisers.

3.17 Part 1 of Schedule 1 contains the composition standards for fertilisers. These include the following:

Nitrogen, phosphorus and potassium

(1) A fertiliser in dry or solid form must contain not less than 3 per cent of nitrogen, phosphorus or potassium.

(2) A fertiliser in liquid form must contain not less than 2 per cent of nitrogen, phosphorus or potassium.

(3) If phosphorus is a specified ingredient of a fertiliser:

(a) any excess of water-soluble phosphorus is taken to compensate for a deficiency of citrate-soluble phosphorus, and

(b) any excess of citrate-soluble phosphorus is taken to compensate for a deficiency of water-soluble phosphorus if the percentage of citrate-soluble phosphorus is less than 25 per cent of the combined water plus citrate soluble phosphorus.

Cadmium
- a phosphatic fertiliser must not contain more than 350 milligrams of cadmium per kilogram of phosphorus.
- a non-phosphatic fertiliser must not contain more than 10 milligrams of cadmium per kilogram of the fertiliser.

Lead
- a fertiliser must not contain more than 100 milligrams of lead per kilogram of the fertiliser.

Mercury
- a phosphatic fertiliser must not contain more than 5 milligrams of mercury per kilogram of the fertiliser.

Superphosphate

A fertiliser described as single superphosphate:
- must be rock phosphate treated with sulphuric acid, and
- must contain at least 7 per cent water soluble phosphorus, and
- must contain at least 8 per cent (water plus citrate) soluble phosphorus, and
- must contain at least 10 per cent sulphur, and
- must not contain more than 3.5 per cent of the sum of the percentages of iron and aluminium expressed as mixed oxides, and
- must not contain more than 2 per cent of iron expressed as the oxide (Fe_2O_3).

A fertiliser described as double superphosphate:
- must contain at least 13 per cent water soluble phosphorus, and
- must contain at least 15 per cent (water plus citrate) soluble phosphorus.

A fertiliser described as triple superphosphate:
- must contain at least 15 per cent water soluble phosphorus, and
- must contain at least 17 per cent (water plus citrate) soluble phosphorus.

Rock phosphate

A fertiliser described as rock phosphate or reactive rock phosphate:

- must be derived from naturally occurring deposits and contain no additives, and
- must contain at least 12 per cent of phosphorus, and
- at least 70 per cent of the fertiliser must be capable of passing through the mesh of an Australian Standard sieve having an aperture of 0.50 millimetres.

Biuret

A fertiliser must not contain more than 2 per cent of biuret (the *Fertilisers Regulation 1997* defines *biuret* as the substance having the chemical formula $NH_2CONHCONH_2$).

Bone meal

If the fertiliser consists of or contains bone meal, not less than 50 per cent of the bone meal must be capable of passing through the mesh of an Australian Standard sieve having an aperture of 0.50 millimetres.

3.18 Part 2 of Schedule 1 of the *Fertilisers Regulation 1997* contains composition standards, including grading requirements, for liming materials.

3.19 A dealer may sell a soil improving agent which does not comply with the prescribed composition standards to a manufacturer of soil improving agents, or to a purchaser to whose prescription the soil improving agent is formulated.

3.20 In relation to imposing maximum permitted concentrations of heavy metals in trace element products, the *Fertilisers Regulation 1997* states that a dealer must not sell a trace element product:

- containing more than 50 milligrams of cadmium per kilogram of the product; or
- containing more than 55 milligrams of lead per kilogram of the product; or
- containing more than 5 milligrams of mercury per kilogram of the product.

3.21 However, a dealer may sell a trace element product containing more than 500 milligrams (but not more than 2,000 milligrams) of lead per kilogram of the product if the product is represented as being suitable only for direct application to the soil.

3.22 Closely related to composition standards are provisions in the *Fertilisers Regulation 1997* which impose restrictions on dealers when making representations about organic and blood and bone fertilisers. These provisions include:

A dealer must not, for the purposes of sale or supply, represent a fertiliser:

- to be an organic fertiliser unless the fertiliser contains at least 95 per cent organic matter;
- to be an organically based fertiliser unless the fertiliser contains at least 65 per cent organic matter;
- to contain organic matter unless the fertiliser contains at least 30 per cent organic matter.

A dealer must not, for the purposes of sale, represent a fertiliser to be a blood and bone fertiliser unless:

- at least 90 per cent of the fertiliser consists of blood and bone;
- the fertiliser contains at least 4.5 per cent total nitrogen and at least 5 per cent total phosphorus; and
- the fertiliser contains not more than 0.2 per cent water soluble nitrogen and not more than 0.5 per cent water soluble phosphorus.

A dealer must not, for the purposes of sale, represent a fertiliser to be a blood and bone based fertiliser unless at least 65 per cent of the fertiliser consists of blood and bone.

3.23 The *Fertilisers Regulation 1997* defines *blood and bone* as blood, bone meal, meat meal, fish. Flesh and feather meal.

3.24 The above restrictions in relation to representations made by dealers in relation to blood and bone fertilisers are augmented with that component of the composition standards (as stated in paragraph 3.17), which require that if a fertiliser consists of or contains bone meal, then not less than 50 per cent of the bone meal must be capable of passing through the mesh of an Australian Standard sieve having an aperture of 0.50 millimetres.

Labelling

3.25 A dealer shall not sell a soil improving agent under a registered brand name unless the soil improving agent is contained in a parcel which is marked with details of the brand name, the registered particulars, the quantity of soil improving agent contained in the parcel and any other prescribed particulars. The Act defines *parcel* as including a sack, bag, barrel, case, package and any other container.

3.26 The registered particulars include:

- in the case of a fertiliser, the proportion in which any nitrogen, phosphorus or potassium, or any prescribed form of these, occurs in the fertiliser; and
- in the case of a liming material, the proportion in which any calcium, magnesium or sulphur, or any prescribed form of these, occurs in the liming material, as well as the effectiveness of the liming material.

3.27 The prescribed forms of nitrogen, phosphorus and potassium contained in the *Fertilisers Regulation 1997* include the following:

Nitrogen as:

- a nitrate compound;
- an ammonium compound;
- as urea;
- an organic compound; and
- any form other than those referred to above.

Phosphorus as:

- water soluble;

- ammonium citrate soluble;
- ammonium citrate insoluble; and
- any form other than those referred to above.

Potassium as:

- potassium chloride;
- potassium nitrate;
- potassium phosphate;
- potassium sulphate; and
- potassium in any form other than those referred to above.

3.28 The *Fertilisers Regulation 1997* defines the *effectiveness* of a liming material as the sum of the following values:

- the value obtained by multiplying the neutralising value of the liming material by the proportion of liming material having a particle size of not more than 300 microns;
- the value obtained by multiplying six tenths of the neutralising value of the liming material by the proportion of the liming material having a particle size of more than 300 microns but not more than 850 microns; and
- the value obtained by multiplying one tenth of the neutralising value of the liming material by the proportion of the liming material having a particle size of more than 850 microns.

3.29 The *Fertilisers Regulation 1997* defines the *neutralising value* of a liming material as the value equivalent to the amount of acid neutralised by the liming material, expressed as a percentage of the amount of acid neutralised by an equal amount of calcium carbonate.

3.30 Other prescribed particulars contained in the *Fertilisers Regulation 1997* include:

- in the case of a soil improving agent specified in Column 1 of Schedule 3 of the *Fertilisers Regulation 1997*, the warning statement specified in Column 2 of that Schedule (these warning statements relate to the occupational health and safety of those persons applying these products, as well as to the health of livestock and plants and environmental problems); and
- in the case of any soil improving agent, the maximum concentrations of cadmium, lead and mercury present in the soil improving agent.

3.25 These provisions do not apply to the sale of a soil improving agent to a manufacturer of soil improving agents, where:

- the soil improving agent comprised in the sale consists of a bulk lot of 90 kilograms or more and the dealer concerned furnishes the purchaser with an invoice containing the required particulars; or
- where the soil improving agent is obtained, in the presence of the purchaser, from a parcel which is marked with the required particulars.

3.32 In addition to the above labelling requirements, the *Fertilisers Regulation 1997* states that a dealer must not sell a fertiliser if the label on a parcel of the fertiliser, or an invoice or delivery docket for the fertiliser, indicates the presence in the fertiliser of a substance referred to in

Schedule 2 of the *Fertilisers Regulation 1997* unless the substance is present in a concentration no less than the relevant concentration specified in that Schedule.

Schedule 2 sets out he following minimum concentration of constituents:

Constituent	**Solid fertilisers concentration (%) w/w**	**Liquid fertilisers concentration (%) w/v**
Nitrogen as nitrate, ammonia, urea or other	0.2	-
Total nitrogen	0.5	0.1
Phosphorus as water or citrate soluble	0.2	-
Phosphorus as citrate insoluble or other	0.1	-
Total phosphorus	0.5	0.1
Potassium as sulphate, chloride, nitrate or other	0.2	-
Total potassium	0.5	0.1
Calcium	0.5	0.01
Magnesium	0.5	0.01
Sulphur	0.5	0.1
Iron	0.01	0.005
Manganese	0.01	0.005
Copper	0.005	0.005
Zinc	0.005	0.005
Boron	0.005	0.005
Molybdenum	0.001	0.001
Cobalt	0.001	0.001

3.33 In relation to the labelling requirements for trace element products, a dealer shall not sell a trace element product unless the trace element product is contained in a parcel which is marked with the following particulars:

- the quantity of trace element contained in the parcel;
- the respective forms in which each trace element occurs;
- the respective proportions in which each such form of trace element occurs; and
- the proportions in which cadmium, lead and mercury are present in a trace element product, expressed as the number of milligrams of cadmium, lead or mercury (as the case requires) per kilogram of fertiliser.

SUBMISSIONS AND DISCUSSION

Registration

3.34 Registration potentially restricts competition by impeding entry to the industry and imposing compliance costs on those who do.

3.35 The introduction of Mutual Recognition Policy in Australia enables fertilisers or other soil improving agents produced in or imported into one State, and which may lawfully be sold in that State, to be sold in NSW without the necessity for compliance with further requirements described in the *Fertilisers Act 1985*.

3.36 The Review Group noted that fertiliser registration has been discontinued in Victoria, Queensland and South Australia, and although legislation in Western Australia still contains registration requirements, these are not being administratively enforced.

3.37 In its submission to the review, the Fertiliser Industry Federation of Australia stated: "*Most other States no longer require fertilisers to be registered; a requirement to do this in NSW will be anti-competitive to suppliers operating from within NSW. The Review Committee has already noted impediments posed by the current regulation, particularly in relation to custom blending to meet specific agronomic requirements.*"

3.38 NSW Farmers' Association stated: "*Current requirements in the Act to register every product are restrictive in the respect that some producers tailor products to the requirements of growers. This produces a anti-competitive effect as the smaller "boutique" companies can't afford to register each individual product and therefore forego niche customers.*"

3.39 A related issue is that the Act, through the brand name registration process, specifically section 7(2) which allows the Director-General to refuse to register a brand name if the brand name is identical or substantially identical to some other registered brand name, provides some protection to proprietors of brand names. The Review Group noted, however, that the Commonwealth *Trade Marks Act 1995* provides proprietary protection to traders of all goods or services, by providing them with the ability to register a trade mark. A registered trademark provides an exclusive right to use it within Australia for the goods or services for which it is registered.

Composition Standards

3.40 The requirement to conform to registered particulars and composition standards potentially restricts competition by limiting flexibility in the production and sale of fertilisers.

3.41 Quality standards would generally be understood to include composition standards for fertilisers. Governments are increasingly restricting the direct regulation of product quality to those instances where variation in a product attribute may impact on human health or the environment.

3.42 There has been no compliance sampling of products or prosecutions under the legislation in recent years. It is therefore unclear whether the objectives of the legislation are being met by the existing registration and composition standard provisions.

3.43 Arguably, consumer demand for information relating to product quality attributes, rather than the legislation, has ensured that manufacturers have maintained product quality.

3.44 In his submission to the review, Mark Conyers stated: "*For traditional fertilisers and liming materials there needs to be no minimum standards or grades. Given adequate labelling the market place can sort out the most cost effective products from competing sources…. Aspects of the current legislation such as "standards" are just plain silly. The application of Grades to liming materials is the clearest example, as it inhibits fair competition between producers and misleads consumers.*"

3.45 Maximum permitted concentrations of mercury, lead and cadmium in specified fertilisers are currently included in the composition standards for soil improving agents. The legislation also imposes maximum permitted concentrations of the above heavy metals in trace element products.

3.46 While there are national standards in place to gradually lower cadmium levels in superphosphate, the Review Group acknowledged cadmium as a serious risk to the sustainability of agricultural systems and a risk which fertiliser manufacturers should be encouraged to address through further product development.

3.47 The Fertiliser Industry Federation of Australia stated: "*Mercury (Hg), lead (Pb) and cadmium (Cd) may occur as impurities in a number of inorganic and organic fertilisers, soil ameliorants, trace elements and stock foods. There is clearly a need for uniform national standards covering the maximum permissible concentration (MPC) of these impurities in fertiliser, soil amendments and trace elements. FIFA supports this and indeed has been active in working to bring about uniform standards.*

"*Cadmium stands out as a potential issue for public health and trade. However, it should be noted that SCARM*[1] *have established a Task Force on Cadmium in Agriculture to develop*

[1] The Standing Committee on Agriculture and Resource Management (SCARM) comprises the Department Heads/Chief Executive Officers of Commonwealth, State/Territory and New Zealand government agencies responsible for agriculture, soil, water and rural adjustment policy issues. The main objectives of SCARM are to support the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) in the achievement of its objective of developing integrated and sustainable agricultural and land and water management policies, strategies and practices for

recommendations for national measures to minimise the impact of cadmium on Australian agriculture.

"*As a major food exporter Australia needs to be able to demonstrate that it has systems in place that are both effective and credible in providing food safety and quality assurance.*"

Labelling

3.48 Labelling requirements potentially restrict competition by imposing compliance costs on fertiliser manufacturers and dealers and forcing them to provide purchasers with certain information. It may therefore impact on their profitability and limit their scope to differentiate their product and, therefore, constrain their responses to market forces.

3.49 On the other hand, labelling enforces the provision of certain information to purchasers which may contribute to public objectives in areas such as environmental protection and occupational health and safety.

3.50 The *Fair Trading Act 1987* does not require products to be labelled, but it is an offence for a label attached to a product to contain false statements. Specifically, it is an offence for persons supplying goods to:

- falsely represent that goods are of a particular grade or composition; or
- make a false or misleading representation concerning the place of origin of the goods; or
- make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

3.25 In its submission to the review, the Fertiliser Industry Federation of Australia stated: "*It is desirable for government to legislate for certain minimum standards in relation to labelling and to impose limits on the levels of impurities present in fertiliser products offered for sale.*

"*FIFA supports the need for mechanisms to ensure that all fertilisers, soil ameliorants, trace elements and stock foods are labelled appropriately to provide users with information about the contents of the products, including the nutrient values and impurities and for warnings to ensure user and environment protection.*"

3.26 Mark Conyers stated: "*Adequate labelling is …essential…While N and P compounds are fertilisers on site, they are pollutants off site. The quality of our surface and ground waters is diminished by both the direct biochemical impact of nitrate and the indirect effect of N and P on algal blooms, which produce toxins. We cannot on one hand ask the EPA and DL&WC to control pollution arising from agricultural land and improve water quality while on the other hand having NSW Agriculture abrogating its responsibility in providing for the efficient management of soil improving agents. The inputs of soil improving agents which we assist consumers to manage can become the polluting outputs which the EPA seeks to manage. It is best to start with good management. For example, it is neither in the interests of our farmer clients nor the consumers of water to waste N and P fertiliser. Sound research and advisory services (e.g. of NSW Agriculture) and adequate knowledge of available products (through*

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the benefit of the Australian community, and to develop cooperative and coordinated approaches to matters of concern to ARMCANZ.

labelling) are necessary prerequisites for our contribution to sound environmental management."

3.53 As described in paragraph 3.26, in relation to the labelling requirements for liming materials, the *Fertilisers Regulation 1997* currently requires that the "effectiveness" of a liming material be stated on the attached label. The formula adopted by the *Fertilisers Regulation 1997* (paragraph 3.28) to calculate "effectiveness" is based on equivalent legislation in Victoria.

3.54 The NSW Branch of the Limestone Association of Australia (LAA) expressed dissatisfaction with the "effectiveness" provisions. They argued that no literature supports the use of the "effectiveness" (or ENV) formula in the *Fertilisers Regulation 1997*. They were of the view that no interpretive criteria, such as ENV, should be required on a label as this criteria may not be applicable given the variety of production systems in which the product may be applied. Information on particle size distribution and a neutralising value for each particle size range should be provided and farmers or their agronomists are then free to use the most applicable means of determining the effectiveness of the product given their individual circumstances (eg. as models become available on the effectiveness of lime, in various chemical forms and in various regions, such interpretive models are able to be applied using the information available on the label).

3.55 The NSW Branch of the LAA strongly advocate the introduction of a "truth in labelling requirement" for liming materials. They stated: "*Our members who represent the majority of liming materials manufacturers/suppliers in NSW, respectfully ask that the following format of such a label be taken into consideration. The label would request the disclosure of the following:*

1. Company name, registered office, postal address, CAN number.
2. Product name.
3. Product description (eg. crushed limestone or dolomite, blast furnace slag, sewerage sludge etc).
4. Product source (eg. XYZ mine, XYZ sewerage works etc).
5. Particle size distribution: per cent by weight passing 1,000 microns, 500 microns, 250 microns, 150 microns, 75 microns.
6. Neutralising Value (relative to pure Calcium Carbonate) for size fractions:
- passing 75 microns
- between 75 and 250 microns
- between 250 and 1000 microns.
7. Chemistry (per cent by weight) of major elements which constitute more than 1 per cent of the total product:
- calcium as carbonate, hydroxide, oxide
- magnesium as carbonate, hydroxide, oxide
- free water content at dispatch
- trace elements (in ppm), particularly cadmium, lead and mercury.

"*It is our belief, as liming materials manufacturers, that the information available on such a label will enable the end users to make the most informed, environmentally safe and commercially sound decisions when it comes to product use. The use of liming materials will be a crucial element in the future fight to redress problems in our agricultural systems arising*

from the subtle menace of acid soils. The LAA believes that those who have to contend with such soils should be as much informed as is possible about liming materials."

3.56 As described in paragraph 3.30, an additional labelling requirement in the case of soil improving agents specified in Column 1 of Schedule 3 in the *Fertilisers Regulation 1997*, is to attach the warning statement specified in Column 2 of that Schedule.

3.57 Issues considered by the Review Group relating to this requirement included: the exact purpose of the warning labels in terms of meeting public policy objectives (eg. protection of environment and human health); the nature of those soil improving agents specified as requiring warning labels; the wording of the specified warning labels; the liability of NSW Agriculture in the event that the specified warning labels are inadequate and damage occurs as a consequence; and the regulatory and non-regulatory mechanisms by which warning labels are provided for on other products (i.e., the suitability of this requirement being within the *Fertilisers Act 1985*).

Sewerage Sludge (Biosolids), Animal Waste and Sea Weed

3.58 Another issue discussed by the Review Group was the use of sewerage sludge, animal wastes and sea weed as soil improving agents.

3.59 It was proposed to regulate for the use of human sewerage sludge as a soil improving agent in the *Fertilisers Regulation 1997*. As a result of submissions received from industry and the discovery of a substantial flaw in the 1992 amendments to the *Fertilisers Act 1985* (these amendments were proposed to have been commenced on 1 September 1997) it was decided to remove references to these products from the new regulations. It was the view of all organisations which made submissions in relation to the *Fertilisers Regulation 1997*, that the regulation of sewerage sludge for use on agricultural land is properly the concern of the EPA.

3.60 Issues for consideration related to sewerage sludge, and indeed all animal wastes used in or as fertilisers, are the levels of nutrients (nitrogen and phosphorous), heavy metals, pesticides, and pathogens (micro-organisms from human excreta in the sludge, including viruses, bacteria and human roundworms, tapeworms and liver flukes) they contain. The present situation appears to be that scientific methods have been developed for the successful treatment of sewerage sludge which have the effect of rendering the use of sludge safe in certain controlled circumstances.

3.61 At present 'controlled circumstances' means a licence to pollute issued by the EPA under the *Protection of the Environment Operations Act 1997*. It is understood that a condition of such a licence is that the sewerage sludge must have been treated by the sewerage plant operator to standards approved by the EPA. These standards, titled "*Environmental Guidelines: Use and Disposal of Biosolids Products"* were produced with considerable input by NSW Agriculture scientists.

3.62 The NSW Government presently has a "*Green Waste Strategy*" in place. It includes the mixing of sewerage sludge with green plant material to form composts which have various uses, all of which could ultimately lead to agricultural land application.

3.63 In its submission to the review, the Hunter Water Corporation stated: "*The Hunter Water Corporation is of the opinion that the regulation of Biosolids is well covered in the EPA Environmental Guidelines for "Use and Disposal of Biosolids Products" and thus is not required to be included in the Fertilisers Act 1985 review unless the biosolids products are mixed with other materials and form registered fertiliser.*"

3.64 A recent initiative of the NSW Government relevant to several aspects of this review, including the use of animal manure and seaweed to increase agricultural production, is the establishment of Safe Food Production NSW (Safe Food). Safe Food was established via the introduction of the *Food Production (Safety) Act 1998*, which was passed by Parliament in November 1998.

3.65 When fully implemented, Safe Food will be responsible for ensuring the safe production, processing, wholesale, and transport of foods for human consumption from the paddock or ocean to the back door of the retail shop.

3.66 Safe Food will develop and implement co-regulatory Food Safety Schemes similar to those now operating in the dairy and meat industries and recently established in the oyster industry. These schemes will be based on the preventative methodology known as Hazard Analysis and Critical Control Point (HACCP). HACCP requires the systematic identification and control of food safety risks at all points in the supply chain. Food Safety Schemes will be developed in stages over the next four to five years, beginning with industry sectors involving the highest food safety risks.

3.67 Safe Food is being established before new national Food Safety Standards come into force, probably from 2000 with a six-year implementation period. These new standards are likely to require all food businesses to establish food safety programs consistent with HACCP principles, where food safety risks exist.

3.68 The NSW Government believes that the establishment of Safe Food will enable NSW to implement the new standards in the production/processing sectors in an integrated way which will:

- maximise the food safety benefits for consumers and the food industry; and
- minimise the compliance costs for individual food businesses.

REVIEW GROUP ASSESSMENT AND RECOMMENDATIONS

Objectives

3.69 As stated in Chapter 2, the Review Group found that the objectives of the *Fertilisers Act 1985* need to be redefined to better comply with Competition Policy principles. At present, the Act appears to be addressing issues relating to quality assurance, food safety, market access and environmental protection. In addition, minor components of the current legislation, specifically certain warning label requirements, also appear to address user occupational health and safety as well as the general health of livestock and plants.

3.70 The Review Group was required to assess whether there is a continuing need for these objectives to be met through government intervention. That is, the Review Group was required to establish any areas of 'market failure' (as defined on page iii) or other clearly defined public policy objectives which are being, or should be, addressed by the Act.

3.71 The Review Group concluded that quality assurance is no longer an appropriate objective of government intervention in the NSW fertiliser industry. There are no apparent impediments preventing the fertiliser industry from establishing appropriate levels of quality assurance.

3.72 The Review Group, however, further concluded that government intervention in relation to the sale of fertilisers in NSW is warranted on the basis of the existence of market failures relating to food safety, market access and environmental protection.

3.73 ***Recommendation 2.***
Further to Recommendation 1, the Review Group recommends that the primary objectives of the Fertilisers Act 1985 should be to:

- ***protect human health by intervening early in the agricultural production process. In particular to ensure that unsafe levels of heavy metals and other contaminants as defined by domestic food standards authorities do not transfer to the human food chain by their excessive presence in soil improving agents or trace element products;***
- ***facilitate international trade by supporting initiatives to ensure that agricultural products destined for export markets comply with the contaminant requirements of international trading partners; and***
- ***protect the environment by better informing purchasers of the composition of soil improving agents and trace element products and by also restricting the content of certain substances.***

Legislative Provisions[2]

3.74 Enforcement of compliance with registered particulars and composition standards is minimal, however the Review Group found that manufacturers of soil improving agents and trace element products face significant commercial incentives to provide quality products.

3.75 With the removal of registration requirements for soil improving agents in most states now complete, and with the remaining jurisdictions currently in the process of removing their requirements, the application of Mutual Recognition Policy means that manufacturers of soil improving agents in NSW face additional compliance costs compared to their interstate competitors.

3.76 In addition, the current requirements in the Act to register every product may be restrictive in that some manufacturers who tailor products to the requirements of particular growers may be disadvantaged. Furthermore, small 'boutique' companies may be unable to afford the registration of each individual product and may therefore forego the opportunity to service niche customers.

[2] Any reference to the *Fertilisers Act 1985* in the assessment and recommendations also refers to the *Fertilisers Regulation 1997*.

3.77 In relation to the protection provided to proprietors of brand names by the *Fertilisers Act 1985*, the Review Group acknowledged that the intention of the provision to allow the Director-General to refuse to register a particular brand name is not to create a proprietary right to a brand name, but rather to ensure that correct information relating to a particular product is available to consumers. Such information includes the name of the registered proprietor of the brand name and other registered particulars.

3.78 The Review Group noted that although the *Fertilisers Act 1985* allows the Director-General to refuse to register a brand name and it is an offence under the legislation for a dealer to sell an unregistered soil improving agent, the legislation may provide insufficient incentive for a dealer to stop selling such a product and the Act has no provision for providing compensation for damages to a proprietor whose registered brand name is used by another proprietor.

3.79 The Review Group was of the opinion that the sale of soil improving agents is not unique in comparison to the sale of other goods, and thus regulatory measures in addition to those applying to the proprietor of any type of good, are unwarranted.

3.80 A registered trademark is the primary way to protect a product name and prevent it from being used by others, although common law also provides some protection for unregistered trademarks (although it may be costly to pursue an action).

3.81 A trademark is registered by the Trade Marks Office, which administers the Commonwealth *Trade Marks Act 1995*. According to that Act, a trade mark can be a letter, number, word, phrase sound, smell, shape, logo, picture, aspect of packaging or a combination of these. It cannot be something that other traders may wish to use to promote or describe their goods or services. A registered trademark provides an exclusive right to use it within Australia for the goods and services for which it is registered. If an infringement of a registered trade mark is proven in court, an injunction may be granted, subject to any condition the court thinks fit, and at the option of the plaintiff but subject to certain conditions, the court may grant damages or an account of profits.

3.82 The Review Group concluded that there was no public benefit to be obtained from additional legislation to protect brand names and that those provisions in the *Fertilisers Act 1985* relating to registration should be removed.

3.83 ***Recommendation 3.***

The Review Group recommends that the requirements imposed by the Fertilisers Act 1985 relating to the registration of brand names for soil improving agents be removed.

3.84 Review Group members were of the opinion that a number of elements of the current composition standards for fertilisers prescribed in Schedule 1 of the *Fertilisers Regulation 1997* relate primarily to quality standards above those required to provide for food safety, market access and environmental protection, and that it is no longer justifiable to retain these provisions. These particular elements include:

- the minium content of phosphorus, nitrogen or potassium which fertilisers must contain;
- composition standards for a fertiliser described as single superphosphate, double superphosphate and triple superphosphate;
- composition standards for a fertiliser described as rock phosphate;

- composition standards for a fertiliser containing bone meal; and
- the application of grades to liming materials.

3.49 ***Recommendation 4.***

The Review Group recommends that the following requirements imposed by the Fertilisers Act 1985 be removed:

- ***the minium content of phosphorus, nitrogen or potassium that fertilisers must contain;***
- ***composition standards for a fertiliser described as single superphosphate, superphosphate and triple superphosphate;***
- ***composition standards for a fertiliser described as rock phosphate;***
- ***composition standards for a fertiliser containing bone meal; and***
- ***the application of grades to liming materials.***

3.49 Currently, the legislation imposes restrictions on representations made by dealers in regard to organic fertilisers, organically based fertilisers, fertilisers containing organic matter, and blood and bone fertilisers. The legislation sets minimum composition requirements which must be met for dealers to be able to make claims in regard to the above types of fertilisers. The Review Group found that these requirements do not address food safety, market access or environment protection and, as such, concluded that retention of these restrictions could not be justified.

3.50 The Review Group further found that in the event of the removal of these restrictions, if there was sufficient demand for information relating to the organic or blood and bone content of a fertiliser product, the market would reward those dealers which provided this information. Thus, rather than arbitrary composition standards relating to organic and blood and bone content of fertilisers being imposed by legislation, consumer demand would encourage dealers to provide consumers with desired information on the organic or blood and bone content of a particular product.

3.51 When dealers provide information relating to the organic or blood and bone content of a fertiliser product, consumer recourse is provided in relation to the truth of these representations through the *Fair Trading Act 1987*.

3.52 ***Recommendation 5.***

The Review Group recommends that the restrictions on representations made by dealers imposed by the Fertilisers Act 1985 relating to the sale of organic fertilisers, organically based fertilisers, fertilisers containing organic matter, and blood and bone fertilisers, be removed.

3.53 The Review Group concluded that provisions restricting the concentrations of heavy metals in fertilisers and trace element products should be maintained, on the basis of food safety, market access and environment protection, and should provide for the inclusion of any other contaminants which are considered (either now or in the future) to have a significant potential to influence food safety, market access or environment protection, and for these restrictions to apply to all soil improving agents and trace element products.

3.54 ***Recommendation 6.***

The Review Group recommends that the requirements imposed by the Fertilisers Act 1985 restricting the concentrations of heavy metals in fertilisers and trace element products be maintained and expanded to provide for other contaminants which are considered (either now or in the future) to have a significant potential to influence food safety, market access or environment protection and for these restrictions to apply to all soil improving agents and trace element products.

3.92 In the case of nitrogen, phosphorus and potassium, the Review Group concluded that these elements may contribute to adverse off-site effects such as stream contamination leading to reduced water quality and biodiversity. Labelling requirements in relation to these elements would assist in informing consumers of content and thereby facilitate the more efficient application of fertiliser and thereby reduce adverse off-site environmental impacts. Similarly, the Review Group concluded that the inefficient application of liming materials may also result in adverse environmental outcomes. For example, inefficient application of calcium, magnesium or sulphur may result in increased soil acidity leading to reduce vegetation cover, which in turn results in increased water infiltration, accessions to ground water and subsequent adverse off-site effects such as rising water tables and increased salinity. The Review Group therefore concluded on environment protection grounds, the legislation should ensure that users of soil improving agents and trace element products are properly informed of the contents of parcels containing soil improving agents and trace element products by an effective system of labelling.

3.93 Those requirements of the current labelling provisions which the Review Group concluded were necessary to maintain on this basis included:

- in the case of a fertiliser, the proportion in which any nitrogen, phosphorus or potassium, or any prescribed form of these, occurs in the fertiliser;
- in the case of a liming material, the proportion in which any calcium, magnesium or sulphur, or any prescribed form of these, occurs in the liming material; and
- in the case of a trace element product, the quantity of trace element contained in the parcel; the respective forms in which each trace element occurs; and the respective proportions in which each form of trace element occurs.

3.49 As stated in paragraph 3.31 (and in Section 16(2) of the Act), the above labelling provisions do not apply to the sale of a soil improving agent to a manufacturer of soil improving agents, where:

- the soil improving agent comprised in the sale consists of a bulk lot of 90 kilograms or more and the dealer concerned furnishes the purchaser with an invoice containing the required particulars; or
- where the soil improving agent is obtained, in the presence of the purchaser, from a parcel which is marked with the required particulars.

3.49 The Review Group concluded that the first of these exceptions, including the requirement that the dealer concerned furnishes the purchaser with an invoice containing the required particulars, should be maintained. The Review Group further concluded, however, that no exception should be provided when the soil improving agent is obtained, in the presence of the purchaser, from a parcel which is marked with the required particulars. The Review Group

found that this exception was inappropriate as consumers were not provided with a written statement detailing the contents of the parcel.

3.50 It should be noted that the present provisions of the legislation regarding these labelling requirements for soil improving agents outlined in paragraph 3.93 are imposed by Sections 7(3) and 16(1) of the Act. Section 7(3) specifies the particulars which must be entered in the register for a brand name to be registered. Section 16(1) states that a dealer shall not sell a soil improving agent under a registered brand name unless it is contained in a parcel which is marked with a number of particulars, including the registered particulars in respect of the brand name under which the soil improving agent is sold.

3.51 Thus, given the Review Group's recommendation that all requirements imposed by the *Fertilisers Act 1985* relating to the registration of brand names for soil improving agents be removed, the labelling provisions for soil improving agents in the current legislation will also be made redundant. New provisions relating to the desired labelling requirements for soil improving agents will therefore need to be drafted.

3.52 ***Recommendation 7.***
The Review Group recommends that the following labelling requirements imposed by the Fertilisers Act 1985 be maintained:

- ***in the case of a fertiliser, the proportion in which any nitrogen, phosphorus or potassium, or any prescribed form of these, occurs in the fertiliser;***
- ***in the case of a liming material, the proportion in which any calcium, magnesium or sulphur, or any prescribed form of these, occurs in the liming material; and***
- ***in the case of a trace element product, the respective forms in which each trace element occurs; and the respective proportions in which each form of trace element occurs.***

3.99 ***Recommendation 8***.
The Review Group also recommends that the alternate information provision requirements imposed by the Fertilisers Act 1985 in relation to the sale of a soil improving agent to a manufacturer of soil improving agents, where the soil improving agent comprised in the sale consists of a bulk lot of 90 kilograms or more [paragraphs (a) and (b) of subsection 16(2)], be maintained. The Review Group further recommends, however, that the exception provided when the soil improving agent is obtained, in the presence of the purchaser, from a parcel which is marked with the required particulars [paragraph (c) of subsection 16(2)], be removed.

3.100 The Review Group concluded that the current labelling requirement in relation to the effectiveness of a liming material should be removed as this method of calculating a figure to represent the effectiveness of a particular product may be misleading or meaningless depending on the circumstances surrounding the proposed use of the product.

3.101 As noted in paragraph 3.92, adverse environmental impacts may result from the inefficient application of nitrogen, phosphorus, potassium, calcium, magnesium or sulphur. Furthermore, in relation to liming materials, product effectiveness is a function not only of the elements it contains, but also of particle size. The Review Group therefore concluded that

there are grounds on the basis of environment protection, for requiring that information on particle size distribution be provided on labels.

3.102 As this is an issue which the Review Group believes can be more effectively addressed when drafting the subordinate legislation, it was concluded that provision should be maintained in the primary legislation to allow for the possible inclusion of alternate labelling requirements, but that the detail of these requirements be determined when the subordinate legislation is drafted.

3.103 ***Recommendation 9.***

The Review Group recommends that the current labelling requirements imposed by the Fertilisers Act 1985 in relation of the effectiveness of a liming material be removed, but that provision be maintained to allow for the possible inclusion of alternate labelling requirements, such as particle size distribution.

3.104 In relation to all the above labelling requirements, in the event that the current legislative arrangements continue, or alternative legislative arrangements are introduced, the Review Group concluded that it be an offence under these arrangements for non-compliance with these requirements. The Review Group noted that the provisions of the *Fair Trading Act 1987*, which make it an offence for a label attached to a product to contain false statements, would enable enforcement of the truth of this labelling information. The Review Group, however, concluded that an offence provision should be retained in the *Fertilisers Act 1985* so that there is still the ability, should it prove administratively difficult to enforce under the *Fair Trading Act 1987*, to prosecute an offender for selling a soil improving agent unless it conforms to the required particulars marked on the parcel in which it is contained.

3.105 ***Recommendation 10.***

The Review Group recommends that non-compliance with labelling requirements imposed by the Fertilisers Act 1985 be an offence under the Fertilisers Act 1985. The Review Group also recommends that it be an offence under the Fertilisers Act 1985 to sell a soil improving agent or trace element product unless it conforms to the required particulars marked on the parcel in which it is contained..

3.106 The Review Group, after considering the requirements relating to warning labels contained in Schedule 3 of the *Fertilisers Regulation 1997*, found that the outcome intended to be achieved by a number of the warning labels to be unclear. However, the Review Group considered that it was not the appropriate body to verify the appropriateness of the list of soil improving agents specified as requiring warning labels, nor the suitability or correctness of the specified warning labels. The Review Group concluded that this issue can be addressed when drafting the subordinate legislation, and that provision be maintained in the primary legislation to allow for the inclusion of warning label requirements, but that the detail of these requirements be determined when the subordinate legislation is drafted. Specifically, the Review Group concluded that the warning label requirements imposed by Schedule 3 of the *Fertilisers Regulation 1997* should be reviewed, with labels only being required for those soil improving agents which pose a risk to food safety, trade or the environment. Consideration should also be given to the correctness and suitability of the specified warning labels.

3.107 A related issue is that some of the specified warning labels appear to be addressing user occupational health and safety. The Review Group was doubtful about the suitability of addressing occupational health and safety issues in the *Fertilisers Act 1985*, rather than in generic occupational health and safety legislation. If it is considered to be the best approach, however, the Review Group concluded that the provision for warning labels to be attached to soil improving agents which pose a risk to human health and safety, should be retained.

3.108 ***Recommendation 11.***
The Review Group recommends that the warning label requirements imposed by Schedule 3 of the Fertilisers Regulation 1997 should be reviewed, with labels only being required for those soil improving agents which pose a risk to food safety, trade or the environment. Consideration should also be given to the correctness and suitability of the specified warning labels.

3.109 ***Recommendation 12.***
The Review Group recommends that if during the review of the warning label requirements imposed by Schedule 3 of the Fertilisers Regulation 1997 it is deemed appropriate, then the provision for warning labels to be attached to soil improving agents which pose a risk to human health and safety should be retained.

3.110 In relation to the regulation of biosolids the Review Group concluded that the use of sewerage sludge as fertiliser is adequately addressed by existing EPA legislation.

3.111 The Review Group concluded that food safety was the major hazard posed by the use of animal manure and seaweed to enhance the productive capacity of agricultural land. As Safe Food is the new authority which will coordinate and streamline food safety regulations across the State, the Review Group concluded that Safe Food should consider measures to satisfactorily address this practice.

3.112 The Review Group also concluded, however, that scope should be provided in the *Fertilisers Act 1985* for regulation to control the use of animal manure and seaweed to enhance the productive capacity of agricultural land, if it proves necessary. This scope, however, would be restricted so that the substances which the *Fertilisers Act 1985* regulates could only be expanded to include animal manure and seaweed if circumstances dictated that Safe Food was unable to adequately address this practice.

3.113 ***Recommendation 13.***
The Review Group recommends that Safe Food be requested to consider measures which address the hazards posed to human health by the use of animal manure and seaweed to enhance the productivity of agricultural land. The Review Group also recommends, however, that scope be provided in the Fertilisers Act 1985 for regulation to control this practice, if it proves necessary.

4. COMPETITION RESTRICTIONS OF THE STOCK FOODS ACT 1940

BACKGROUND

4.1 Applying the definition that a restriction on competition occurs when the behaviour of individuals or firms is changed from that which would otherwise occur, the Review Group made an assessment that the major provisions of the *Stock Foods Act 1940*, namely:

- labelling requirements for manufactured stock food; and
- composition standards for stock food (limits on 'foreign ingredients'),

may all restrict competition in some way.

Labelling Requirements for Manufactured Stock Food

4.2 A person must not in the course of carrying on any business supply:

- stock food for any stock (whether or not food-producing species or horses); or
- stock food supplement for any stock (whether or not food-producing species or horses),

in a package unless the package has on it, or on a label securely and conspicuously attached to it, the particulars required by the regulations.

4.2 This provision also applies to anything supplied in the form of a block as if the block were a package. It does not apply to supply by retail of a portion of the contents of a package (labelled as required by this provision) when the supply is without alteration of, or in addition to, that portion of the contents.

4.3 The labelling requirements prescribed by the regulations are divided into the requirements for all manufactured stock food and those which are additional and only apply to manufactured stock food containing animal tissue.

4.4 The regulations define the following terms:

- *manufactured stock food* as stock food that has undergone a manufacturing process and is in a form in which it is ready to be fed to stock;
- *animal tissue* as tissue or blood (other than tallow) derived from the carcass of any animal or bird, and includes any substance produced from or containing any such tissue or blood;
- *non-ruminant tissue* as animal tissue that is not ruminant tissue;
- *ruminant animal* as an animal that has a rumen, and includes an animal belonging to any of the following classes of animal, namely, cattle, sheep, goats and deer; and
- *ruminant tissue* as animal tissue derived from the carcass of a ruminant animal.

4.6 A package of any manufactured stock food must have attached to it a label that contains:

(a) a statement indicating the particular class of stock, and the age or stage of production of such stock, which the stock food will maintain or for which it will promote the growth or productive capacity, and
(b) if the stock food contains more than 30 grams per kilogram of urea:
  (i) a statement of the proportion (in grams per kilogram) of urea in the stock food;
  (ii) a warning that the stock food may be poisonous for some classes of stock;
  (iii) directions as to the proper use of the stock food; and
(c) if the stock food contains more than 5 grams per kilogram of added salt, a statement of the proportion (in grams per kilogram) of salt added to the stock food.

4.7 Examples of a class of stock might include stock of a particular species, or of a type within a species. Examples of an age or stage of production of stock might include weaner pigs, broiler chickens or lactating cows.

4.8 A package of any manufactured stock food containing ruminant tissue must have attached to it a label which contains one of the following statements:

- "This product contains ruminant material - DO NOT FEED TO CATTLE, SHEEP, GOATS, DEER OR OTHER RUMINANTS".
- "This product contains ruminant material - DO NOT FEED TO RUMINANTS".
- "For pig use only".
- "For poultry use only".
- "For pig and poultry use only".
- "For (*insert name of non-ruminant species*) use only".

4.9 A package of any manufactured stock food containing non-ruminant tissue must have attached to it a label that contains one of the following statements:

- "This product does not contain ruminant material".
- "For pig use only".
- "For poultry use only".
- "For pig and poultry use only".
- "For (*insert name of non-ruminant species*) use only".

4.10 These provisions for the labelling of packages of stock food containing animal tissue do not apply to stock food manufactured before 1 July 1997, or to stock food that is manufactured as pet food, as food for caged birds (other than poultry) or as food for ornamental fish.

4.11 Closely related to the labelling provisions of the legislation is the requirement for a person who in the course of carrying on any business supplies to another person any stock food in bulk to at the time of delivery provide a written statement about the stock food containing the same information as is required to appear on a label of stock food of the same kind supplied in a package. The written statement required by this provision need not be a separate statement and can be included as part of an invoice.

4.12 For the purposes of this provision, stock food is supplied in bulk whenever it is supplied otherwise than in a package. The sole exception being a retail supply of an unaltered portion of a labelled package.

4.13 Stock food supplied in the form of a block is taken not to be a supply of stock food in bulk.

Composition Standards for Stock Food (Limits on 'Foreign Ingredients)

4.14 The legislation imposes maximum allowable proportions or amounts of certain substances (foreign ingredients) to be contained in stock foods. The legislation also contains a list of substances which are prohibited outright.

4.15 Foreign ingredients, those kinds of stock foods which they pertain to, and the maximum allowable proportion or amount, or in the case of chemical residues, MRLs, are contained in Schedule 1 of the *Stock Foods Regulation 1997* and Column 1 of Table 4 in the NRA document *MRL Standard: Maximum Residue Limits in Food and Animal Feedstuffs*, together with such amendments made to this document as are published in the Commonwealth Gazette.

4.16 Schedule 1 of the regulations is separated into a number of parts including: prohibited substances; weed seeds and plants; toxic compounds; and antioxidants, minerals and urea. Though the regulations may prescribe the proportion or amount of any foreign ingredient that may be contained in stock food, the Minister may by order published in the Gazette set the proportion or amount of a foreign ingredient, whether or not a maximum allowable proportion or amount of the foreign ingredient is prescribed by the regulations.

4.17 It is an offence under the legislation for a person in the course of carrying on any business to supply to another person a stock food that contains more than the maximum allowable proportion or amount of a foreign ingredient.

4.18 The Minister, or any person authorised by the Minister, may, by notice in writing served on any person, order that person to withdraw from supply any stock food which is or appears to the Minister (or that authorised person) to be unfit for use as a stock food.

4.19 In addition to the limits on foreign ingredients imposed by the legislation, the Act allows for the regulations to make provision with respect to regulating or prohibiting the incorporation of a veterinary chemical product in a stock food to produce a medicated stock food. The regulations, however, do not currently contain such a provision.

SUBMISSIONS AND DISCUSSION

Labelling

4.20 Labelling standards which relate to product quality may impose unnecessary costs on stock food producers and provide few benefits to consumers. Restrictive labelling standards may also impede innovation in the labelling and marketing of stock foods.

4.21 Conversely, inadequate labelling of stock foods may impose costs on consumers, where they are not able to adequately judge the composition of a stock food and where this may have spillover effects on human health, animal welfare and the trade of agricultural products.

4.22 In its submission to the review, the Stock Feed Manufacturers' Association of Australia stated: "*The existing labelling provisions contained in the Act all address the objectives relating to animal and human health issues identified in the Issues Paper. In fact, we would contend that additional information should be required on labels to adequately protect animal and human health.*

"*…It is our belief that the existing labelling provisions contained in the Regulations to the Act, particularly those that relate to feed offered for sale, provide significant benefits to consumers while not imposing unnecessary or excessive costs on stock food producers. They are by no means restrictive; in fact, we feel that they are the bare minimum that could be imposed to address the objectives of the Act. Labelling provisions included in the Regulations all address significant animal health issues which have the potential to impact on the economic viability of users of stock feed and hence on the ultimate consumers of livestock products*."

4.23 NSW Farmers' Association stated: "*The labelling of stock foods serves the public in two distinct ways. Firstly it reinforces the contents of, intended uses, and designated type of species for which a stock food is intended to those members of the public who are familiar with or experienced with using stock foods.*

"*Secondly, labels serve to inform those members of the public who are unfamiliar with stock food products about the above provisions. The ultimate objective of labelling is to uphold the health and welfare of stock by ensuring that a product is not used for a purpose, or on an animal it is not intended for.*

"*In addition to identifying stock foods which contain ruminant tissue, labels also provide information on salt and urea content and concise directions for proper use. The provision of labels is an important link in information transfer, and therefore provides a net public benefit.*

"*….It is important to note that livestock QA systems such as Cattlecare, Flockcare, APIQ, and ISO 9002 rely heavily of (sic) the ability of livestock producers to identify the contents of products that they purchase as stockfeeds, and to certify that these are free from contamination*."

Composition standards

4.24 The legislation restricts the way in which a stock food manufacturer may produce a stock food by imposing maximum allowable proportions or amounts of certain substances to be contained in stock foods. These limits on foreign ingredients can be justified if they are effectively addressing animal and human welfare/health and trade requirements.

4.25 In its submission to the review, the Stock Feed Manufacturers' Association of Australia stated: "*The setting of restrictions on potentially harmful ingredients or contaminants in stock food and feed ingredients in legislation serves to highlight their significance to stock feed producers and their suppliers in a way that could not be equally well achieved by any alternative strategy. It is significant to note that the biggest product liability event in the stock*

feed industry's history occurred in a State (South Australia) where no standards were established in legislation at the time to control the levels of toxic weed seeds in stock feeds.

"*…Stock feed producers, if left to self regulate stock food composition, would have significantly less influence with ingredient suppliers when it comes to enforcement of quality standards which can affect animal and human health. The existence of legislated standards greatly assists industry participants in holding their position with respect to rejection of contaminated ingredients. Industry participants have on occasion attempted to establish, with trading contracts, lower tolerances for certain contaminants than those levels set in legislation, or to establish tolerances for certain contaminants not stipulated in legislation. In practice, this has proved extremely difficult to achieve. Stock feed manufacturers often have to negotiate trading terms and purchases with suppliers having significantly greater market power than themselves (eg the major grain marketing boards) and members of this Association have generally found it impossible to sustain any tolerances for contaminants not included in State legislation (eg nil tolerance for heliotrope seed in grains specifically destined for feeding to pigs).*"

4.26 NSW Farmers' Association stated: "*The key market failures addressed by this legislation are the externalities or spillover effects associated with the marketing of stockfoods that result in unacceptable residues being present in meat products for human consumption in either domestic or international markets.*

"*Being essentially an undifferentiated product at the retail level, there is little opportunity to trace product back to the source of contamination, or to isolate the problem to a limited volume of product. Hence the entire industry suffers in the event that a residue problem arises.*

"*Numerous examples are available of situations in recent history where residue detections have resulted in massive trace dislocation, product rejection and a loss of consumer confidence, even when these situations had no real potential to impact on human health. The recent CFZ contamination problem, although technically unrelated to a contaminated proprietary stockfood, demonstrated the significance of such problems*.

"*The cost of setting and monitoring minimum standards for various impurities of foreign seeds (such as parthenium) which can easily be incorporated into stock feeds would be negligible compared to the costs associated with identifying, controlling and eradicating potential outbreaks of such noxious weeds. In this respect the legislation provides a public good and therefore outweighs the cost of regulation."*

4.27 In relation to the effectiveness of the legislation, NSW Farmers' Association stated: "*The provisions under the Stock Foods Act 1940 appear to have been effective in achieving their objectives, even from the simple perspective of the results of monitoring programs such as the National Residue Survey. However, NSW Agriculture no longer has the resources to police the compliance of this legislation. In recent years there has been no prosecutions relating to the Stock Foods Act, or evidence of unacceptable levels of residues or contaminants being related to the use of stock feeds.*

"*Despite this the Government in most cases relies on the integrity of industry and the recourse available to effected parties to ensure the objectives of the Act are conscientiously adhered to.*"

4.28 As mentioned in paragraph 4.19 above, the Act empowers, but the regulations do not make provision for, regulating or prohibiting the incorporation of a veterinary chemical product in a stock food to produce a medicated stock food. NSW Agriculture advised the Review Group that these powers have not been implemented because they are considered to be adequately covered by other (national) legislation.

REVIEW GROUP ASSESSMENT AND RECOMMENDATIONS

Objectives

4.29 As stated in Chapter 2, the Review Group found that the objectives of the *Stock Foods Act 1940* need to be redefined to comply with Competition Policy principles. At present, the central emphasis of the Act is on food safety, animal welfare and market access.

4.30 The Review Group concluded that government intervention in relation to the sale of stock foods in NSW is warranted on the basis of market failures relating to food safety, animal welfare and market access.

4.31 ***Recommendation 14.***
The Review Group recommends that the primary objectives of the Stock Foods Act 1940 should be to:

- ***protect human health by intervening early in the agricultural production process. In particular to ensure that unsafe levels of contaminants as defined by domestic food standards authorities do not transfer to the human food chain by their excessive presence in food producing animals;***
- ***facilitate international trade by supporting initiatives to ensure that livestock and meat products destined for export markets comply with the contaminant requirements of international trading partners; and***
- ***protect the welfare of animals consuming stock foods.***

Legislative Provisions

4.32 In relation to the labelling requirements of the legislation, while acknowledging the associated compliance costs, the Review Group concluded that they provide benefits which significantly outweigh these costs. Consumers are better informed of the contents of stock food and as a result, benefits are delivered in the form of animal welfare, market access and human health. As stated in submissions, the successful operation of quality assurance systems operating in the livestock industry depend on stock food being appropriately and accurately labelled.

4.33 In relation to composition standards, the Review Group concluded that restrictions on potentially harmful ingredients in stock food could not be effectively achieved by alternative non-regulatory approaches. The legislation provides a means of recourse for effected parties to ensure the integrity of stock food. As highlighted in submissions, the legislation ensures that

stock food manufacturers are supplied with non-contaminated ingredients which without legislation, may prove near impossible. The Review Group believed that the associated compliance costs are negligible in comparison with the costs that would be borne by both industry and consumers if a problem was to arise. An example of an incident involving contaminated stock food which cost an industry and indeed the whole economy of a country an enormous amount of money was the detection of dioxin in poultry and pig feed in Belgium.

4.34 As discussed in paragraph 4.28, the provision in the Act to regulate or prohibit veterinary chemical products in a stock food has not been implemented because this matter is sufficiently covered by other legislation.

4.35 The Review Group therefore concluded that with the exception of the provision to regulate or prohibit veterinary chemical products in a stock food, the requirements imposed by the *Stock Foods Act 1940* be maintained.

4.36 ***Recommendation 15.***
The Review Group recommends that the powers provided by the Stock Foods Act 1940, with the exception of the provision to regulate or prohibit veterinary chemical products in a stock food, be maintained.

5. COMPETITION RESTRICTIONS OF THE STOCK MEDICINES ACT 1989

BACKGROUND

5.1 Applying the definition that a restriction on competition occurs when the behaviour of individuals or firms is changed from that which would otherwise occur, the Review Group found that the major provisions of the *Stock Medicines Act 1989*, namely:

- prohibiting possession of certain stock medicines;
- controlling the use of registered and unregistered stock medicines;
- controlling the prescription or supply of stock medicine by veterinary surgeons;
- requiring buyers of treated stock to be notified of unexpired withholding periods;
- requiring sellers of stock food treated with a stock medicine to inform buyers that the food has been so treated, and to provide buyers with certain written details including the relevant withholding period; and
- restricting the advertising of certain stock medicines.

may all restrict competition in some way.

Prohibiting possession of certain stock medicines

5.2 The Act states that a person must not have possession or custody of an unregistered stock medicine unless the person is a pharmacist or veterinary surgeon, or it was prescribed or supplied by a veterinary surgeon.

Controlling the use of registered and unregistered stock medicines on animals

5.3 A person must not use an unregistered stock medicine on stock that is a member of a food producing species unless authorised to do so by a permit or order issued under sections 33 or 35.

5.4 A person must not use an unregistered stock medicine on stock that is not a member of a food producing species unless:

- the person is a veterinary surgeon who uses the stock medicine in the course of professional practice and the stock medicine is a registered human pharmaceutical or has been compounded by the veterinary surgeon, or
- the stock medicine was prescribed or supplied by a veterinary surgeon, in the course of professional practice to deal with a particular condition of an animal or animals under his or her care, and is used for that purpose in accordance with the instructions of the veterinary surgeon, and is a registered human pharmaceutical or has been compounded by the veterinary surgeon.

5.5 A person must not use a registered stock medicine that is labelled so as to indicate that it is not for use on stock that produces, or is to be used as, food for human consumption, on stock that is a member of a food producing species, unless authorised by a permit or order issued under sections 33 or 35.

5.6 A person must not use a registered stock medicine in a manner contrary to any other instructions that the package of the stock medicine (or the label on the package) is required to have on it when sold unless:

- the person is a veterinary surgeon and uses the stock medicine in that manner in the course of the practice of his or her profession; or
- the person uses the stock medicine in that manner in accordance with written instructions given by a veterinary surgeon; or
- the person uses the stock medicine in that manner because he or she is required to do so by an order in force under the Act.

Controlling the prescription or supply of stock medicine by veterinary surgeons

5.7 Special provisions apply if the substance being used as a stock medicine is:

- an unregistered stock medicine; or
- a registered stock medicine, if the stock medicine is prescribed, supplied or authorised to be supplied for use in a manner contrary to any instructions that the package of the stock medicine (or the label on the package) is required to have on it when sold; or
- a restricted substance within the meaning of the *Poisons and Therapeutic Goods Act 1966.*

5.8 Each time a veterinary surgeon prescribes, supplies or authorises the supply of such a stock medicine, the veterinary surgeon must give to the person for or to whom the stock medicine is prescribed or supplied, and to the person who is authorised to supply the stock medicine, written instructions, signed and dated by the veterinary surgeon and including the veterinary surgeon's name and address, about the following matters:

- the animal species for which the stock medicine is intended;
- the withholding period, if any;
- the dose rate;
- the frequency of treatment;
- the length of treatment; and
- the manner of administration.

5.9 A veterinary surgeon must not prescribe, supply or authorise the supply of such a stock medicine unless it is done in the course of the practice of his or her profession and for the purpose of dealing with a particular condition of an animal or animals under his or her care.

5.10 A veterinary surgeon must not prescribe, supply or authorise the supply of an unregistered stock medicine for use on stock of a food producing species.

Requiring buyers of treated stock to be notified of unexpired withholding periods

5.11 An owner of stock of a food producing species must, if the stock has been treated with a stock medicine and there is a relevant withholding period for the stock medicine that has not expired, inform a buyer of such stock that the stock has been so treated, and when the relevant withholding period will expire.

5.12 A person must not sell any stock of a food producing species that has been treated with a stock medicine for which there is a relevant withholding period that has not expired unless the person informs any buyer or potential buyer, orally or in writing, before the sale, that the stock has been so treated, and when the relevant withholding period will expire.

Requiring sellers of stock food treated with a stock medicine to inform buyers that the food has been so treated, and to provide buyers with certain written details including the relevant withholding period

5.13 A person who supplies stock food to another person, knowing that the food has been treated with a stock medicine, must ensure that the person supplied is aware that the food has been so treated, and must provide the person supplied with such written details concerning the use of the stock medicine as were obtained by the supplier when the supplier obtained the food or when the supplier obtained the stock medicine with which the food has been treated.

5.14 The written details must include details of the withholding period applicable to the stock medicine as specified by the veterinary surgeon who prescribed or supplied the stock medicine or authorised the stock medicine to be supplied for the treatment of the stock food, or if no such details have been so specified, as specified on the label on the package containing the stock medicine.

Restricting the advertising of certain stock medicines

5.15 The Act states a person must not advertise a stock medicine containing a substance included in Schedule One, Three, Four or Eight of the Poisons List (established by the *Poisons and Therapeutic Goods Act 1966*) otherwise than in a journal whose circulation is generally limited to, or in a document intended for distribution exclusively to, veterinary surgeons, pharmacists or wholesalers of stock medicines.

SUBMISSIONS AND DISCUSSION

Prohibiting possession of certain stock medicines; controlling the use of registered and unregistered stock medicines; and controlling the prescription or supply of stock medicine by veterinary surgeons

5.16 Prohibiting possession of certain stock medicines unless prescribed by a veterinary surgeon, and restricting the use of some such medicines to veterinary surgeons may restrict access to those medications by potential users of those products such as other animal care providers and farmers. At the same time, there are strong public interest reasons for these restrictions to be put in place.

5.17 Submissions concentrated on the reasons for maintaining the current restrictions imposed by the *Stock Medicines Act 1989*. Food safety and international trade, animal welfare and informed consent, integrated case management and reduced reliance on stock medicines, control over restricted drugs (human health), and the availability of effective drugs were some of the potential market failures identified in submissions to support continuation of the legislation.

5.18 In its submission to the review, the Australian Veterinary Association - NSW Division stated: *"The sale of livestock products for domestic human consumption and export is reliant on effective implementation of drug withholding periods and certification of treatment regimes. Today more than ever consumers are aware of residues and food safety. Not only is it important that food is residue free but also that our animal industries are perceived to be residue free.*

"Animals are not capable of consenting to treatment so to protect the welfare of animals drug-prescribing laws must be more rigid than in the human field. Restricting the use of some medicines to veterinary surgeons and restricting the use of non-registered drugs in non-food producing animals may appear anti-competitive on the surface but are restrictions that protect the welfare of animals.

"The use of non-registered medicines in non-food producing animals is an important resource for veterinarians. However, without the background in veterinary medicine and pharmacology prescribing such drugs can be at best a waste of money for the consumer and at worst extremely dangerous to the animals involved.

"*Veterinary surgeons are appropriately trained in pharmacology and medicine and are capable of developing integrated case management strategies to help limit the use of registered medicines. Effective control over stock medicines helps protect the efficacy of drugs such as antibiotics by ensuring that their use is indicated and the dose rate correct. Overuse or incorrect use of antibiotics can result in development of bacterial resistance.*

"*Substance abuse of drugs such as anabolic steroids by humans is a well recognised problem especially by some athletes, body builders and teenage males. Anabolic steroids do have a place in the treatment of certain animal diseases. However, there is a need to restrict the prescribing of these drugs so that they can only be administered by a registered veterinary surgeon.*"

5.19 NSW Farmers' Association which represents a significant group of people which would benefit from an easing of these restrictions, in the form of lower prices, supported their retention. The Association stated: "*There is no doubt that restricting the right of sale of some products to veterinary surgeons decreases competition by narrowing the points of sale and hindering market competition. This increases the price of some products substantially which has a direct affect on the returns of those producers that rely on these products for production.*

"*It must be recognised that strict controls are necessary to protect the livestock industry from not only chemical residues, but from related accusations from both the media and the consumer. There is no doubt that strict controls over these products provide a net public benefit, even if only through end user's piece of mind.*

"*It is important to note that often products restricted to sale by veterinarians, have that restriction because the administration of such products require the qualified opinion of a qualified veterinarian. This type of sale generally occurs by consulting with the animal owners at the time of diagnosis of the animals condition. The quantity of, and number of treatments may vary according to the severity of the problem as diagnosed by the veterinarian*.

"*Treatment using such restricted products by unqualified parties could significantly affect the animals recovery, and chances of survival, thus raising a raft of animal welfare and chemical residue concerns. In this respect it is important to recognise that this Act has an influence on commodity markets far outside the boundaries of NSW so that any changes should be considered very seriously*."

Requiring buyers of treated stock to be notified of unexpired withholding periods; and requiring sellers of stock food treated with a stock medicine to inform buyers that the food has been so treated, and to provide buyers with certain written details including the relevant withholding period

5.20 The requirement for buyers of treated stock to be notified of unexpired withholding periods and the requirement for sellers of stock food treated with a stock medicine to inform buyers that the food has been so treated may ensure that buyers are made aware of the potential for such treated stock, or stock fed such treated stock feed, to be in breech of the applicable MRL's.

5.21 Where these requirements are addressing issues related to food safety and market access, i.e., instances where because buyers are not made aware of these facts there is the potential for adverse impacts on either human health or industry access to particular markets, then they may contribute to public policy objectives.

Advertising

5.22 The advertising restrictions imposed by the legislation apply to those substances listed in Schedule One, Three, Four or Eight of the Poisons List under the *Poisons and Therapeutic Goods Act 1966*. These schedules are defined by that Act as:

Schedule One - substances which are of such extreme danger to life as to warrant their being supplied only by medical practitioners, pharmacists, dentists, veterinary surgeons or persons licensed under Part 3.

Schedule Three - substances which are for therapeutic use and:

(i) about which personal advice may be required by the user in respect of their dosage, frequency of administration and general toxicity;
(ii) with which excessive unsupervised medication is unlikely; or
(iii) which may be required for use urgently so that their supply only on prescription of a medical practitioner or veterinary surgeon would be likely to cause hardship.

Schedule Four - substances which in the public interest should be supplied only upon the written prescription of a medical practitioner, dentists or veterinary surgeon.

Schedule Eight - substances which are addiction producing or potentially addiction producing.

5.23 Restrictions on advertising eliminate a normal form of competition between businesses in that consumers are less informed about product availability and prices. Practitioners who may be able to offer these products at a lower price are restricted from advertising this fact and hence the cost of prescribed drugs to consumers may be higher than otherwise. In the absence of greater consumer awareness through advertising, authorised persons may be less accountable

in their use of drugs, they may be influenced to a greater extent by favourable selling arrangements with drug companies, and may be more likely to prescribe 'unnecessarily' expensive products.

5.24 Alternatively, these restrictions may reduce the pressure placed on authorised persons by drug companies and owners of animals to over prescribe certain substances or to use inappropriate substances. They may also reduce demand for certain drugs and associated drug resistance problems.

5.25 Further concerns expressed by the industry members of the Review Group were the increased risk of chemical residues from increased usage and the fact that advertising costs will be recouped by higher prices. Both the processor and producer members of the Review Group were opposed to open advertising of those substances listed on Schedule Four of the Poisons List for these reasons.

5.26 In relation to the advertising of 'Prescription Only' medicines (also known as 'S4's' or 'Schedule 4's) in its submission to the review, the Australian Veterinary Association - NSW Division stated: "*Veterinarians prescribe the most appropriate medicine, based on the case and the client. A veterinarian rarely, if ever, is able to prescribe an 'unnecessarily' expensive product. The reason for this is that veterinary medicine, being un-subsidised in comparison to human medicine, is under continual cost pressure from clients and other practices.*

"*Prescription Only medicines are those medicines whose use, in the expert opinion of NHMRC and NSW Health Department, should be restricted to doctors, veterinarians, dentists and a small number of other prescribed persons. This group includes antibiotics (because of the risk of antibiotic resistance), tranquilisers and hypnotics and most important therapeutic medicines, including those with substantial side effects. Professional prescription of these substances requires a knowledge of the disease processes, pathology, pharmacology and side effects, differential diagnoses and knowledge of the client, including likelihood of compliance and literacy.*

"*Advertising in professional journals is generally of a technical nature and includes substantial information. In addition, practitioners usually have additional information in the surgery at all times, provided by the companies to provide relevant additional information on 'non-advertising' issues such as side effects, contraindictations and interactions.*

"*By contrast, the USA does allow advertising of 'Prescription Only' medicines. The industry incurs significant advertising costs as a result, which are built into the costs of the product and there is a significantly greater use of those medicines that advertise to lay public rather than medical choice as to the best possible medicine. In addition, there is a substantially high use of 'brand name' medicines, who can afford to advertise, over cheaper generic products that do not advertise.*"

5.27 Of relevance to the advertising restrictions imposed by the *Stock Medicines 1989* is a national review of legislation and regulation pertaining to drugs, poisons and controlled substances. The Terms of Reference for the national review include examining inconsistencies of regulation and administration of that regulation in relation to advertising restrictions.

5.28 The review has been commissioned by State, Territory and Commonwealth Governments in accordance with obligations under National Competition Policy and the Competition Principles Agreement. The review is examining the case for reform of legislative restrictions on competition contained in the legislation and regulations governing drugs, poisons and controlled substances. The Acts and Regulations being reviewed are listed in Appendix 4.

5.29 The review is scheduled to be completed and the findings submitted to the Australian Health Ministers Conference on 30 June 2000. Upon consideration of the report and comments from jurisdictions the report and recommendations will be forwarded to COAG.

Suspended registration and labelling provisions

5.30 Another issue discussed by the Review Group was those provisions of the *Stock Medicines Act 1989* relating to registration and labelling requirements that were suspended when provision was made for the *Agvet Code* to apply in NSW.

5.31 The NRA's process of evaluation of agricultural and veterinary chemical products, which by definition do not include stock food or fertilisers, is required to account for risks to human health and safety, property, the environment and overseas trade, and is primarily based on efficacy and concern to prevent excessive chemical residues in food and fibre products. The process is designed to ensure that products from a farming system where agvet chemicals are used strictly in accordance with label instructions, will not contain residues in excess of MRLs set by the NRA and adopted by the Australia New Zealand Food Authority.

REVIEW GROUP ASSESSMENT AND RECOMMENDATIONS

Objectives

5.32 As stated in Chapter 2, the Review Group found that the objectives of the *Stock Medicines Act 1989* need to be redefined to comply with Competition Policy principles. At present, the Act appears to be addressing issues in regard to food safety, market access and animal welfare. The Review Group observed that there is little scope or likelihood of the Act effectively addressing environmental protection concerns.

5.33 The Review Group concluded that government intervention in relation to the use of stock medicines in NSW is warranted on the basis of the existence of market failures relating to food safety, animal welfare and market access.

5.34 ***Recommendation 17.***
Further to Recommendation 1, the Review Group recommends that the primary objectives of the Stock Medicines Act 1989 should be to:

- ***protect human health by intervening early in the agricultural production process. In particular to ensure that unsafe levels of chemical residues as defined by domestic food standards authorities do not transfer to the human food chain by their excessive presence in food producing animals;***

- ***facilitate international trade by supporting initiatives to ensure that livestock and meat products destined for export markets comply with the chemical residue requirements of international trading partners; and***
- ***protect the welfare of animals treated with stock medicines.***

Provisions

5.35 As stated in paragraphs 5.30-5.31, the registration and labelling requirements of the *Stock Medicine Act 1989* were suspended with the application of the *Agvet Code* in NSW. As there is no reason for maintaining these provisions in the legislation, the Review Group concluded these should be removed.

5.36 As stated in submissions, there are strong public interest reasons for the restrictions imposed by prohibiting possession of certain stock medicines, controlling the use of registered and unregistered stock medicines, and controlling the prescription or supply of stock medicine by veterinary surgeons. The Review Group concluded that alternative less competition restricting arrangements would not be effective in addressing concerns relating to animal welfare, food safety and market access. Access to international markets as well as consumer confidence in domestic markets are dependent on legislation being maintained which addresses issues associated with the use of stock medicines. The Review Group therefore concluded that these restrictions need to be maintained and are the most effective means of achieving the recommended objectives.

5.37 In relation to the information disclosure requirements associated with the sale of stock and stock food treated with stock medicines, the Review Group concluded that these are a pro-active means of ensuring product integrity. The Review Group further concluded that legislation is necessary to ensure the disclosure of such information, and as such, these requirements need to be maintained.

5.38 During the review process, the Review Group became aware of a deficiency in the *Pesticides Act 1978* which was relevant to the provision in the *Stock Medicines Act 1978* requiring buyers of stock treated with stock medicines to be notified of unexpired withholding periods.

5.39 It came to the attention of the Review Group that there are no similar provisions in the *Pesticides Act 1978* in regard to stock of a food producing species which has been treated by a veterinary chemical product which is regulated under that Act.

5.40 The Review Group concluded that the *Stock Medicines Act 1989* should be expanded to require buyers of stock of a food producing species treated with either a stock medicine or a pesticide (as defined), to be notified that the stock has been so treated, and when the relevant withholding period will expire.

5.41 In relation to the current restrictions on advertising of stock medicines imposed by the *Stock Medicines Act 1989*, the Review Group was undecided on whether these restrictions should be retained or repealed. As noted in paragraphs 5.27 - 5.29, a national review of drugs, poisons and controlled substances legislation is currently underway which while it will not be explicitly reviewing the provisions in the *Stock Medicines Act 1989*, it's recommendations may have consequential impacts on the advertising restrictions in the *Stock Medicines Act*

1989. As such, the Review Group concluded that further consideration should be given to the issue following the completion of the national review of drugs, poisons and controlled substances legislation.

5.42 ***Recommendation 16.***
The Review Group recommends that the powers provided by the Stock Medicines Act 1989, with the exception of the registration and labelling provisions, be maintained.

5.43 ***Recommendation 17.***
The Review Group recommends that further consideration be given to the advertising restrictions imposed by the Stock Medicines Act 1989 following the completion of the national review of drugs, poisons and controlled substances legislation.

5.44 ***Recommendation 18.***
The Review Group recommends that the notification requirements imposed by the Stock Medicines Act 1989 be expanded to require buyers of stock of a food producing species treated with either a stock medicine or a pesticide (as defined), to be notified that the stock has been so treated, and when the relevant withholding period will expire.

6. COMPETITION RESTRICTIONS OF THE STOCK (CHEMICAL RESIDUES) ACT 1975

BACKGROUND

6.1 Applying the definition that a restriction on competition occurs when the behaviour of individuals or firms is changed from that which would otherwise occur, the Review Group made an assessment that the major provisions of the *Stock (Chemical Residues) Act 1975*, namely:

- restrictions on stock that are detected as being, or suspected of being 'chemically affected'; and
- a group of other provisions which provide powers to: order the destruction or disposal of fodder which, if used, would cause stock to become chemically affected; restrict or prohibit grazing on land to prevent stock from becoming chemically affected; prohibit misrepresentations on sale of stock after treatment with specified substances; and prohibit false or reckless statements in regard to the chemical residue status of stock being sold,

may all restrict competition in some way.

Restrictions on Stock that are Detected as Being, or Suspected of Being 'Chemically Affected'

Detention and seizure of stock known or suspected of being chemically affected

6.2 Stock may be detained at a specified place if they are, or are suspected of being, chemically affected. Stock may be detained for up to 120 days by an inspector, or they may be detained indefinitely if the owner or person in charge is issued with a detention notice by the Minister or by an authorised agent. Where the stock are not at the specified place, then the owner or person in charge must move them to that place.

6.3 An inspector who detains stock only because they are suspected to be chemically affected, must take for analysis specimens from those stock or exercise any other power conferred on the inspector by the Act for the purpose of ascertaining whether those stock are chemically affected.

6.4 Stock that have been moved contrary to the legislation or any notice served under this Act, may be seized by an inspector or by a member of the police force.

Regulate the movement of stock known or suspected of being chemically affected

6.5 The Act allows the regulations to detail any requirements to be complied with by persons who own or who are in charge of any stock that are to be or are being moved from one place to another, including stock that are to be or are being moved into NSW from outside the State. Although there are no requirements currently contained in the regulations, this provision was included in the Act to enable the inspection of stock being moved from interstate that are suspected of being chemically affected.

Destruction or disposal of chemically affected stock considered unsalvageable

6.6 Where, in the opinion of the Minister, there is no reasonable possibility that particular chemically affected stock would ever cease to be chemically affected, the Minister may order any owner or person in charge of the stock, or any owner or occupier of land on which stock are kept or pastured, to destroy or dispose of the stock in such manner and under such conditions as may be specified in the order.

Other Provisions

6.7 In addition, the legislation provides powers to:

- order the destruction or disposal of fodder which, if used, would cause stock to become chemically affected;
- restrict or prohibit grazing on land to prevent stock from becoming chemically affected;
- prohibit misrepresentations on sale of stock after treatment with specified substances; and
- prohibit false or reckless statements in regard to the chemical residue status of stock being sold.

Destruction or disposal of fodder which, if used, would cause stock to become chemically affected

6.8 Where, in the opinion of the Minister, stock are likely to become chemically affected by feeding on particular fodder, the Minister may order the owner or person in possession of that fodder to destroy or dispose of it in such manner and under such circumstances as may be specified in the order.

6.9 If a person fails to comply with any requirement of these orders, in relation to both stock or fodder, authorised agents may enter the land on which the stock or fodder are situated and carry out those requirements. Any expenses incurred in the exercise of these powers are recoverable in court as a debt to the Crown owed by the person on whom the order was served. Compensation is not payable by the Government in respect of the destruction or disposal of any chemically affected stock or fodder.

Restrict or prohibit grazing on land to prevent stock from becoming chemically affected

6.10 If it is the Minister's opinion that the grazing of stock on particular land is likely to cause the stock to become chemically affected, the Minister may, by Notification published in the Gazette, restrict or absolutely prohibit the grazing on that land of all or any class of stock.

Prohibit misrepresentations on sale of stock after treatment with specified substances

6.11 A seller of stock is guilty of an offence against this Act if that person represents to the buyer that the stock have not been treated with a stock medicine or other substance specified in an order in force declaring stock chemically affected, no matter whether that person knew or not, that the stock had been treated with such a stock medicine or other substance.

Prohibit false or reckless statements in regard to the chemical residue status of stock being sold

6.12 A person must not, in submitting an application or otherwise giving information for the purposes of this Act, give information which is knowingly false or misleading. A person is also guilty of an offence against this Act if, in the course of or in connection with the sale or disposition of any stock, that person makes a statement to the effect that:

- the stock are not chemically affected or are not chemically affected in a particular way; or
- the stock have not been on land that is associated with chemically affected stock; or
- the owner or person in charge of the stock has certified that the stock are not chemically affected or are not chemically affected in a particular way,

if the person knows that the statement is false or misleading or is recklessly indifferent as to the truth or falsity of the statement.

SUBMISSIONS AND DISCUSSION

6.13 The powers provided by the *Stock (Chemical Residues) Act 1975* represent direct constraints on the management choices of livestock producers. These powers are highly restrictive and appear to be based on the premise that in certain circumstances producers may fail to adopt management practices which ensure that stock yield products which comply with relevant chemical residue standards. These provisions may restrict competition by:

(a) delaying or preventing the sale of stock even to informed buyers;
(b) altering farmers decisions about what chemicals to use, and how; and/or
(c) public awareness that a producer is or has been subject to a relevant Ministerial order discouraging the purchase of stock, perhaps even unaffected stock, from that producer. (In this regard it is relevant to note that the livestock market, through the use of the National Vendor Declaration Scheme, discriminates against stock which either contain, or potentially contain, residues, even though the residue levels are below the set MRLs. This impact may be greater than the potential discriminatory effects on stock owners caused by Ministerial orders under this legislation.)

6.14 The nature of the majority of the powers provided by the legislation is such that they are utilised only under specific circumstances, i.e., when either a chemical residue problem has been detected or is suspected. Given the increasing emphasis being placed by consumers on food safety and the sensitivity of key export markets to chemical residues, the legislation may play an important back-up role in addressing food safety concerns and averting any adverse impacts on trade. In addition it may improve incentives for the generation and dissemination of information to enable buyers to make more informed decisions about the residue status of livestock products.

6.15 It is important to note that industry based developments in quality control and assurance, such as Cattlecare, Flockcare and the National Vendor Declaration scheme for cattle, encourage efficiency gains in meeting public policy objectives in relation to food safety and access to overseas markets associated with chemical residues. Furthermore, strategic alliances are also being formed along production chains with both quality and food safety in mind.

6.16 A recent initiative aimed at improving product integrity and market access is the National Livestock Identification Scheme (NLIS). The NLIS is an initiative of the national cattle industry and has been developed by industry in consultation with the State and Commonwealth Governments. It provides for lifetime individual identification of cattle and enhances the current transaction tagging system for monitoring and traceback of both stock diseases and chemical residues.

6.17 The NLIS is currently a voluntary scheme but requires legislative underpinning (in the form of Commonwealth legislation) to allow it to operate effectively. Legislation will shortly commence in NSW which will complement the requirements of the NLIS.

6.18 Following are a selection of comments from submissions which relate to industry based initiatives to address chemical residues in livestock.

6.19 NSW Farmers' Association stated: "*The free market only indirectly provides the necessary incentives for producers to adopt appropriate management practices. Random residue testing at slaughter provides the opportunity for detection which will, in turn, inform the market place that certain livestock products are not up to standard, however, by that time there has already been a considerable post-farm cost addition, and residue testing procedures do not target every animal.*

"*The introduction of the National Vendor Declaration (NVD) in the cattle industry has gone some way towards providing the appropriate information at point-of-sale of the live animal to enable free-market signals to be clearly transmitted, but this arrangement does not apply in other livestock industries, and it is also clear that purchasers of stock on occasion use this information to unfairly downgrade livestock prices.*

"*Through the NVD system, plus warnings on chemical product labels and the media, producers are aware of the importance of residue management and so implement practices that allow for it's effective control. Again, the Act does not provide a "Police force" but it is legally binding and provides legal recourse.*

"*In response to ever increasing market requirements industry has in recent years placed great emphasis on, and facilitated the adoption of industry specific voluntary on-farm Quality Assurance programs which address the safe and responsible use of chemicals on farm, chemical residue in soil and the labelling and storage of chemicals.*

"*Having said this the Association believes that at this point in time legislation is needed to maintain the objectives of the Act and to ensure that unacceptable standards do not evolve. The legislation also provides a path of recourse for adversely affected parties.*"

6.20 The Australian Veterinary Association - NSW Division stated: "*It will be necessary to retain existing government regulatory arrangements to protect the consumer from residue affected stock. Market driven industry initiatives can not be expected to be completely effective in every case and as such would place the industry itself at risk if residue affected product was offered for sale at all. The AVA wishes livestock to continue to be marketed as residue free, or within maximum residue levels, rather than being priced according to how much residue is present.*"

6.21 Following are a selection of comments from submissions which relate to restrictions on the movements of chemically affected stock.

6.22 The Veterinary Manufacturers and Distributors Association stated: "*By restricting the movement of chemically affected stock it can be alleged that this is anti-competitive. However, because the Act addresses the prevention of slaughter of certain affected stock, the benefit to human health is obvious. These [the costs of the legislation] are borne by the producer of affected stock but are necessary for human health reasons*"

6.23 NSW Farmers' Association stated: "*The direct control of movement or sale of stock that are, or are suspected of being chemically affected are necessary to ensure both food safety and trade integrity. Foreign trading partners need to know that in times of crisis, (ie Helix and Dieldrin issue) the authorities have the necessary controls over industry to identify and solve industry problems pertaining to chemical residues in livestock.*

"*Non statutory arrangements would not have the credibility of this Act and would not provide relatively straightforward legal recourse for effected parties.*

"*There have been situations in the past that have resulted in individual producers being discriminated against for being suspected of having chemical residues in their livestock. However, to take away the authority to control the movement of effected or suspected stock would see the whole industry discriminated against on a world wide basis.*"

6.24 The livestock industry is the source of chemically affected stock and is the primary beneficiary of the *Stock (Chemical Residues) Act 1975*. As stated in submissions, industry requires this legislation to ensure consumer confidence and market access. A common principle of current policy and regulatory design is that if particular groups are able to be identified as the 'polluters', then there may be a case for those individuals, or their industry, to fund the regulatory activity.

REVIEW GROUP ASSESSMENT AND RECOMMENDATIONS

Objectives

6.25 As stated in Chapter 2, the Review Group found that the objectives of the *Stock (Chemical Residues) Act 1975* need to be redefined to comply with Competition Policy principles. At present, the Act is addressing issues related to food safety and market access. The Review Group concluded that there is little scope or likelihood of the Act effectively addressing animal welfare or environmental protection concerns.

6.26 The Review Group concluded that government intervention in relation to farm chemical residues in livestock in NSW is warranted on the basis of the existence of market failures relating to food safety and market access.

6.27 ***Recommendation 19.***

The Review Group recommends that the primary objectives of the Stock (Chemical Residues) Act 1975 should be to:

- ***protect human health by intervening early in the agricultural production process. In particular to ensure that unsafe levels of chemical residues as defined by domestic food standards authorities do not transfer to the human food chain by their excessive presence in food producing animals; and***
- ***facilitate international trade by supporting initiatives to ensure that livestock and meat products destined for export markets comply with the chemical residue requirements of international trading partners.***

Legislative Provisions

6.28 The Review Group concluded that industry based systems of identification and quality assurance should be encouraged and that regulatory arrangements should not act as a disincentive to their further development. Nevertheless, the Review Group concluded that government intervention could not be totally removed. The Review Group were of the opinion that in the absence of legislation, the NSW Government would be unable to adequately control adverse chemical residue problems, should they occur.

6.29 The Review Group therefore concluded that the current legislation should be retained, but with the proviso that any activities of government undertaken in accordance with the Act, should be funded by the livestock industry. This will require the livestock industry to develop appropriate funding arrangements.

6.30 ***Recommendation 20.***

The Review Group recommends that the powers provided by the Stock (Chemical Residues) Act 1975 be maintained, but with the proviso that any activities of government undertaken in accordance with such requirements be funded by the livestock industry.

7. COMPETITION RESTRICTIONS OF PART 7 OF THE PESTICIDES ACT 1978

BACKGROUND

7.1 Applying the definition that a restriction on competition occurs when the behaviour of individuals or firms is changed from that which would otherwise occur, the Review Group found that the major provisions of Part 7 of the *Pesticides Act 1978*, namely directions for foodstuffs containing unacceptable levels of chemical residues, may restrict competition in some way.

Directions for foodstuffs containing unacceptable levels of chemical residues

7.2 As stated in Chapter 2, a prescribed foodstuff subject to Part 7 is any vegetation from which produce of a kind referred to in Column 1 of Schedule 1 to General Standard A14 of the *Food Standards Code* is obtained, or any produce of a kind so referred to (other than produce that is the result of a manufacturing process), or prescribed produce of any living animal of a prescribed class of animals, that is, or may become, capable of being used as food for any form of life.

7.3 A foodstuff contains a prohibited residue when a concentration of a substance referred to in Column 1 of Schedule 1 to General Standard A14 of the *Food Standards Code* is in excess of the set MRL, or when a detectable concentration is present of a substance for which a maximum permissible concentration has not been specified.

7.4 The provisions in Part 7 allow an inspector to serve a notice which requires a person to either not part with possession or control of the foodstuff, to retain the foodstuff in a place where it will least endanger the health of the public, or to deal with the foodstuff in accordance with directions set out in the notice (other than acts requiring the destruction of the foodstuff).

7.5 The Minister for the Environment may also make an order in respect of a foodstuff which is subject to a notice described above. Such an order may contain the same provisions as in a notice except that it may also contain instructions to destroy the foodstuff. However, before the Minister may order the destruction of a quantity of prescribed foodstuff, several requirements must be met. One of these is that the Minister must be satisfied that there is no reasonable likelihood of the foodstuff ceasing to contain a prohibited residue within three years following the date on which the order was made.

SUBMISSIONS AND DISCUSSION

7.6 These provisions place restrictions on the movement and/or sale of certain foodstuffs and as a result may potentially cause inconvenience and/or impose costs on either the owner of a prescribed foodstuff, the occupier of the place where the foodstuff is situated, or the person in charge of any vehicle, aircraft or vessel in or on which the foodstuff is situated.

7.7 It is commonly considered that the same level of regulation for residues and contaminants in livestock and livestock products is not currently afforded to plants and plant produce.

However, it appears that there currently are some instruments to deal with residues in plants and plant produce, in the form of Part 7 of the *Pesticides Act 1978* and the *Food Act 1989*, but that these powers are generally not used.

7.8 In addition, the powers in Part 7 of the *Pesticides Act 1978* do not appear to be constrained strictly to farm-level intervention, but appear to extend right through the marketing chain (other than produce that is the result of a manufacturing process).

7.9 NSW Agriculture undertakes a monitoring program in relation to the level of chemical residues present in produce sold at the Flemington fruit and vegetable market in Sydney. This involves officers from NSW Agriculture randomly taking samples of produce sold at the market and sending these for laboratory testing. The Review Group understands that where testing indicates that a sample contains a residue, but which is below the MRL for that particular chemical, NSW Agriculture provides an advisory service, informing the producer of the occurrence and encouraging them to address the issue. Where testing indicates that the sample contained a residue level above the MRL for that particular chemical, NSW Agriculture informs the EPA. The Review Group understands that the EPA has not undertaken action using the powers provided by Part 7 of the *Pesticides Act 1978* because they have been unable to obtain the necessary evidence to enable enforcement action. The primary emphasis of EPA investigations of such cases is to determine whether there is evidence of an offence under other parts of the *Pesticides Act 1978*. In instances where the EPA is unable to take action, NSW Agriculture may be asked to provide a follow-up advisory service to the producer.

7.10 The Review Group noted that the provisions in Part 7 of the *Pesticides Act 1978* only allow the confiscation and, by Ministerial Order, the possible destruction of plants or plant produce which exceed MRLs. It does not provide the power to prosecute people for having or selling plants or plant produce which exceed MRLs unless they do so in contravention of an order.

7.11 In relation to Part 7 of the Pesticides Act 1978, in its submission to the review, NSW Farmers' Association stated: "*It would seem that other legislative or regulatory mechanisms have been considered appropriate in situations (if any) that have arisen relevant to this legislation. It appears that this part of the Pesticides Act duplicates provisions in other legislation, and is therefore unnecessary*."

REVIEW GROUP ASSESSMENT AND RECOMMENDATIONS

Objectives

7.12 As stated in Chapter 2, the Review Group found that the objectives of Part 7 of the *Pesticides Act 1978* need to be redefined to comply with Competition Policy principles. At present, the Act is addressing issues related to food safety and market access.

7.13 The Review Group concluded that government intervention in relation to farm chemical residues in plants and plant produce (other than produce that is a result of a manufacturing process) in NSW is warranted on the basis of the existence of market failures relating to food safety and market access.

7.14 ***Recommendation 21.***

The Review Group recommends that the primary objectives of Part 7 of the Pesticides Act 1978 should be to:

- ***protect human health by intervening early in the agricultural production process. In particular to ensure that unsafe levels of chemical residues as defined by domestic food standards authorities do not transfer to the human food chain by their excessive presence in plants and plant produce (other than produce that is a result of a manufacturing process); and***
- ***facilitate international trade by ensuring that plants and plant produce (other than produce that is a result of a manufacturing process) destined for export markets comply with the chemical residue requirements of international trading partners.***

Provisions

7.15 The *Pesticides Act 1978* contains provisions which allow for direct intervention to prevent foodstuffs containing unacceptable levels of chemical residues from progressing further along the food production chain.

7.16 The Review Group was of the opinion that there needs to be effective means for the NSW Government to intervene to prevent livestock, plants and plant produce containing unacceptable levels of chemical residues from progressing further along the food production chain.

7.17 NSW Agriculture presently regulates chemical residues in livestock through its administration of the *Stock (Chemical Residues) Act 1975*. The Review Group concluded that the powers provided by Part 7 of the *Pesticides Act 1978* to regulate chemical residues in plants and plant produce (other than produce that is a result of a manufacturing process), would be more effectively administered if they were to be transferred into the same legislation regulating chemical residues in livestock, i.e., the *Stock (Chemical Residues) Act 1975*. The result would be a single piece of legislation regulating chemical residues in livestock, plants and plant produce.

7.18 The Review Group also concluded that to ensure consistency of regulation of chemical residues in livestock, plants and plant produce, the regulatory powers in relation to chemical residues in plants and plant produce (other than produce that is a result of a manufacturing process) should be extended to incorporate the following regulatory powers: the ability to restrict or prohibit production on land to prevent plants and plant produce from becoming chemically affected; the ability to prohibit misrepresentations on sale of plants and plant produce after treatment with specified substances; and the ability to prohibit false or reckless statements in regard to the chemical residue status of plants and plant produce. It should be noted that there are equivalent provisions relating to livestock currently in the *Stock (Chemical Residues) Act 1975*.

7.19 ***Recommendation 22.***

The Review Group recommends that the powers provided by Part 7 of the Pesticides Act 1978 to regulate chemical residues in plants and plant produce be transferred into the Stock (Chemical Residues) Act 1975. The result would be a single piece of legislation regulating chemical residues in livestock, plants and plant produce (other than produce that is a result of a manufacturing process).

7.20 ***Recommendation 23.***

The Review Group recommends that within the amalgamated legislation, the regulatory powers in relation to chemical residues in plants and plant produce be extended to incorporate the following regulatory powers: the ability to restrict or prohibit production on land to prevent plants and plant produce from becoming chemically affected; the ability to prohibit misrepresentations on sale of plants and plant produce after treatment with specified substances; and the ability to prohibit false or reckless statements in regard to the chemical residue status of plants and plant produce. This would ensure consistency of regulation of chemical residues in livestock, plants and plant produce.

8. FUTURE STRUCTURE OF THE LEGISLATION

CASE FOR AMALGAMATION

8.1 The *Fertilisers Act 1985*, the *Stock Foods Act 1940* and the *Stock Medicines Act 1989* provide a set of regulatory controls over the chemical inputs to livestock production. In the event, however, that stock become contaminated the *Stock Chemical Residues Act 1975* provides powers to stop contaminated stock from progressing further up the food chain. Part 7 of the *Pesticides Act 1978* similarly provides powers to regulate for chemical residues in plants.

8.2 The Review Group considered whether it would be appropriate to amalgamate any or all of the Acts under review. In assessing this issue, consideration was given to the objectives of the various Acts and the administrative efficiencies which may be achieved. The Review Group concluded that each of these acts have multiple objectives including human health, international trade, animal welfare and environmental protection and that the emphasis placed on each of these objectives varies depending on the nature and circumstances of the residue contamination.

8.3 The *Fertilisers Act 1985*, the *Stock Foods Act 1940* and the *Stock Medicines Act 1989*, all have similar objectives and each represents an attempt by the NSW Government to control the level of chemicals in inputs to the process of livestock production. It follows that amalgamation of these Acts would ensure greater consistency in how the NSW Government regulates chemical inputs to the production process. The Review Group therefore concluded that these pieces of legislation should be amalgamated.

8.4 Once contamination has been detected, the *Stock (Chemical Residues) Act 1975* and Part 7 of the *Pesticides Act 1978* can be used by the New South Wales Government to stop contaminated product progressing further along the food chain. Such product may otherwise be directed to either the domestic or export markets. As stated in Chapter 7, the Review Group recommends that the powers provided by Part 7 of the *Pesticides Act 1978* to regulate chemical residues in plants and plant produce be transferred into the *Stock (Chemical Residues) Act 1975*. The result would be a single piece of legislation regulating chemical residues in livestock, plants and plant produce. The EPA has indicated its approval to the recommendation and is willing to repeal Part 7 of the *Pesticides Act 1978*, once equivalent legislation has been introduced.

8.5 An issue, however, which may warrant consideration is whether the amalgamated *Stock (Chemical Residues) Act 1975* and Part 7 of the *Pesticides Act 1978* may be appropriately administered by the newly created Safe Food Production NSW on the basis that food safety, as it relates to both domestic and export markets, would be the primary objective of the legislation. Having this legislation administered by Safe Food Production NSW and being part of the proposed 'Meat Industry Food Safety Scheme' may facilitate greater consistency with respect to how food production processes are regulated in NSW and would provide consistency with respect to the level of industry funding for these activities.

8.6 A further option for consideration may be amalgamation of some or all of the legislation included in this review with NSW Agriculture's animal and plant health legislation. A primary rationale for this amalgam would be savings in administration costs.

8.7 ***Recommendation 24.***

The Review Group recommends that the NSW Government consider whether the amalgamated Stock (Chemical Residues) Act 1975 and Part 7 of the Pesticides Act 1978 should be administered by Safe Food Production NSW in order to facilitate greater consistency in the regulation of food production processes in NSW.

8.8 ***Recommendation 25.***

The Review Group recommends that the Fertilisers Act 1985, **the** ***Stock Foods Act 1940*** **and the** ***Stock Medicines Act 1989 be amalgamated. The Review Group recommends that any further amalgamation of the resulting legislation with either the amalgamated Stock (Chemical Residues) Act 1975 and Part 7 of the Pesticides Act 1978 or with any other legislation, be considered within the context of the forthcoming Competition Policy review of NSW Agriculture's animal and plant health legislation.***

APPENDIX 1

THE TERMS OF REFERENCE

Review of the *Fertilisers Act 1985*, the *Stock (Chemical Residues) Act 1975*, the *Stock Foods Act 1940*, the *Stock Medicines Act 1989* and Part 7 of the *Pesticides Act 1978*.

1. The review of the *Fertilisers Act 1985*, the *Stock (Chemical Residues) Act 1975*, the *Stock Foods Act 1940*, the *Stock Medicines Act 1989* and Part 7 of the *Pesticides Act 1978* shall be conducted in accordance with the principles for legislation reviews set out in the Competition Principles Agreement. The guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that:

   (a) the benefits of the restriction to the community as a whole outweigh the costs; and

   (b) the objectives of the legislation can only be achieved by restricting competition.

2. Without limiting the scope of the review, the review is to:

   (a) clarify the objectives of the *Fertilisers Act 1985*, the *Stock (Chemical Residues) Act 1975*, the *Stock Foods Act 1940*, the *Stock Medicines Act 1989* and Part 7 of the *Pesticides Act 1978*, and their continuing appropriateness;

   (b) identify the nature of the restrictive effects on competition;

   (c) analyse the likely effect of any identified restriction on competition on the economy generally;

   (d) assess and balance the costs and benefits of the restrictions identified; and

   (e) consider alternative means for achieving the same result, including non-legislative approaches.

3. When considering the matters in (2), the review should also:

   - identify any issues of market failure which need to be, or are being addressed by the legislation;

   - consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* (Cth) and the NSW Competition Code;

   - consider the implications of repealing the Acts;

   - consider the respective roles of NSW Agriculture and the Environment Protection Authority, if any, in the management of fertilisers, chemical residues in livestock products, stock foods, stock medicines and pesticides, in relation to the responsibilities of the Commonwealth Government, other State Government jurisdictions and the industry; and

- where NSW Agriculture and/or the Environment Protection Authority determines it is appropriate to have a role in the management of fertilisers, chemical residues in livestock products, stock foods, stock medicines or pesticides, consider how the cost of any intervention, legislative or otherwise, should be funded.

4. The review shall consider and take account of relevant regulatory schemes in other Australian jurisdictions, and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions.

5. The Review Group shall consult with and take submissions from Government, consumers, livestock producers, meat processors and exporters, industry bodies and other interested parties.

6. The Review Group shall present its report to the Minister for Agriculture.

APPENDIX 2: LIST OF SUBMISSIONS TO THE JOINT REVIEW

No	Date Received	Name	Organisation	Location	State
1	**15 May 1998**	**Mr J Pierce**	**NSW Treasury**	**SYDNEY**	**NSW**
2	**1 July 1998**	**Mr F Doughty**	**AVA - NSW Division**	**ARTARMON**	**NSW**
3	**3 July 1998**	**Mr M Conyers**	**NSW Agriculture**	**WAGGA WAGGA**	**NSW**
4	**10 July 1998**	**Mr A Cole**	**VMDA**	**COLLAROY**	**NSW**
5	**16 July 1998**	**Mr T Plowman**	**Bureau of Resource Sciences**	**BARTON**	**ACT**
6	**17 July 97**	**Dr V Kite**	**SFMAA**	**NORTH SYDNEY**	**NSW**
7	**17 July 97**	**Mr C Sharpe**	**Avcare**	**NORTH SYDNEY**	**NSW**
8	**18 July 1998**	**Mr T B Keene**	**GrainCorp**	**SYDNEY**	**NSW**
9	**19 July 1998**	**Mr D McGuffog**	**FIFA**	**NOOSA**	**QLD**
10	**19 July 1998**	**Mr S Walsh**	**PFIAA**	**MELBOURNE**	**VIC**
11	**23 July 1998**	**Mr M Keogh**	**NSW Farmer's Association**	**SYDNEY**	**NSW**
12	**27 July 1998**	**Mr A Thornton**	**Hunter Water Corporation**	**NEWCASTLE WEST**	**NSW**
13	**20 August 1998**	**Mr S Slattery**	**Narrabri RLPB**	**NARRABRI**	**NSW**
14	**9 September 1998**	**Mr S Rix**	**CCE Working Party**	**SYDNEY**	**NSW**

APPENDIX 3: NATIONAL COMPETITION POLICY REVIEW OF AGRICULTURAL AND VETERINARY CHEMICALS LEGISLATION

Legislation nominated for the review:

National Registration Scheme

Agricultural and Veterinary Chemicals Act 1994 and Determination (under section 23)
Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994
Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Act 1994 and Regulations
Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Act 1994
Agricultural and Veterinary Chemical Products Levy Imposition (General) Act 1994
Agricultural and Veterinary Chemicals (Administration) Act 1992 and Regulations
Agricultural and Veterinary Chemicals Code Act 1994, Regulations and Order
Agricultural and Veterinary Chemicals (Victoria) Act 1994 and Regulations (Vic)
Agricultural and Veterinary Chemicals (Western Australia) Act 1995 and Regulations (WA)
Agricultural and Veterinary Chemicals (Tasmania) Act 1994 and Regulations (Tas)
Agricultural and Veterinary Chemicals (NSW) Act 1994 and Regulations (NSW)
Agricultural and Veterinary Chemicals (South Australia) Act 1994 and Regulations (SA)
Agricultural and Veterinary Chemicals (Queensland) Act 1994 and Regulations (Qld)
Agricultural and Veterinary Chemicals (Northern Territory) Act 1994 and Regulations (NT)

State/Territory Control of Use Legislation

Victoria
Agricultural and Veterinary Chemicals (Control of Use) Act 1992, Regulations 1996 and *Hormonal Growth Promotants Regulations 1993*

Western Australia
Agriculture Bill drafting instructions - sections dealing with resource protection
Veterinary Preparations and Animal Feeding Stuffs Act 1976
Agricultural Produce (Chemical Residues) Act 1983
Aerial Spraying Control Act 1966 and Regulations
Health (Pesticides) Regulations 1956
Agriculture and Related Resources Protection (Spraying Restrictions) Regulations 1979

Tasmania
Agricultural and Veterinary Chemicals (Control of Use) Act 1995

Queensland
Agricultural Chemicals Distribution Control Act 1966 and Agricultural Chemicals Distribution Control Regulations 1970
Chemical Usage (Agricultural and Veterinary) Control Act 1988 and Chemical Usage (Agricultural and Veterinary) Control Regulations

APPENDIX 4: REVIEW OF DRUGS, POISONS AND CONTROLLED SUBSTANCES LEGISLATION

Legislation nominated for the review:

New South Wales
Poisons and Therapeutic Goods Act 1966 (updated 14 July 1998)
Poisons and Therapeutic Goods Regulations 1994 (reprinted as at 30 Jan 1997)
Drugs Misuse and Trafficking Act 1985 (updated 7 Aug 1998).

Queensland
Health Act 1937 (reprinted as in force as at 6 Jan 1999)
Health (Drugs and Poisons) Regulation 1966 (reprinted as in force as at 19 Oct 1998).

South Australia
Controlled Substances Act 1984 (obtained from Internet 1 Feb 1999)
Controlled Substances (Declared Drugs of Dependence) Regulations 1993 (reprinted as at 19 Dec 1997)
Drugs of Dependence (General) Regulations 1985 (obtained from Internet 1 Feb 1999)
Controlled Substances Act (Exemptions) Regulations 1989 (obtained from Internet 1 Feb 1999)
Controlled Substances (Poisons) Regulations 1996 (incorporating all amendments at 3 Dec 1998)
Controlled Substances (Volatile Solvents) Regulations 1996 (obtained from Internet 1 Feb 1999)

Tasmania
Poisons Act 1971 (consolidated at 1 Feb 1999)
Poisons Regulations 1975 (no date - supplied by Tasmania)
Alcohol and Drug Dependency Act 1968 (consolidated at 1 Feb 1999)
Pharmacy Act 1908 (consolidated at 1 Feb 1999)
Criminal Code Act 19245 (consolidated as at 10 Mar 1999 - Tax. Govt. Internet site)

Victoria
Drugs, Poisons and Controlled Substances Act 1981 (incorporating amendments at 5 May 1997)
Drugs, Poisons and Controlled Substances Regulations 1995 (reprinted as at 12 Feb 1998)

Western Australia
Poisons Act 1964 (produced 30 April 1998)
Poisons Regulations 1965 (produced 30 April 1998)
Division 5 (Drugs), Division 6 (Medicines and disinfectants) and Division 7 (Manufacture of therapeutic substances) of Part VIIA of the *Health Act 1911* (as at 30 April 1998)
Drugs of Addiction Notification Regulations 1980
Health (Drugs and Allied Substances) Regulations

Australian Capital Territory
Drugs of Dependence Act 1989 (obtained from Internet 22 Feb 1999)
Drugs of Dependence Regulations 14/1993
Drugs of Dependence Regulations 26/1995
Drugs of Dependence Regulations 29/1995
Poisons Act 1933 (updated as at 9 Dec 1998)
Poisons and Drugs Regulations 1933

Poisons and Drugs Act 1978 (updated as at 9 Dec 1998)
Poisons and Drugs Regulations 1933
Public Health (Sale of Food and Drugs) Regulations

Northern Territory
Poisons and Dangerous Drugs Act (in force as at 10 Dec 1997)
Poisons and Dangerous Drugs Regulations (in force as at 17 Mar 1986)
Therapeutic Goods and Cosmetics Act (in force as at 10 Dec 1997)
Pharmacy Act (in force as at 10 Dec 1997).